



**Snohomish County
Prosecuting Attorney
Mark K. Roe**

Administration
Robert G. Lenz, Operations Manager
Robert J. Drewel Building, 7th Floor / M/S 504
3000 Rockefeller Avenue
Everett, WA 98201-4046
(425) 388-3772
Fax (425) 388-7172

May 30, 2014

This edition of the Charging and Disposition Standards for the Snohomish County Prosecutor's Office continues to reflect the highest priorities of this office: crimes against children and other vulnerable persons, violent crimes, and other crimes that threaten the life and safety of the public. The last edition of the Charging and Disposition Standards was issued in July of 2011. Since then, we have made adjustments to our charging and disposition standards to comport with changes in the law, described further below. Several years of continuous budget reductions have led us to make some difficult decisions to reduce prosecution of some less serious crimes in order to continue vigorous prosecution of crimes that are a higher priority. These changes were made after consultation with law enforcement agency representatives within our county and with county prosecutor's offices around the state.

1. Effect of marijuana law change in 2012 on prosecution of marijuana crimes

The public, the legislature, and the bench in our state have acted to restrict the scope of activities involving the use of marijuana that are subject to criminal prosecution. We believe that the public still expects us to prosecute, and we will endeavor to prosecute, the following crimes involving marijuana: marijuana use by juveniles, marijuana crimes that endanger juveniles, driving offenses involving use of marijuana, and illegal sales of marijuana to undercover officers or to confidential informants who are available to testify. In addition, we will pursue prosecution on certain felony marijuana cases that represent a real and present danger to the community if not prosecuted. The latter cases will be judiciously chosen after consultation with the referring law enforcement agency.

While possession of marijuana remains illegal under federal law, as of December 6, 2012, it no longer is illegal under state law for persons aged 21 or older to possess 1 ounce (28.3 grams) or less of marijuana, 16 ounces or less of marijuana-infused product in solid form, or 72 ounces or less of marijuana-infused product in liquid form. As of December 6, 2012, it also is no longer illegal under state law for persons to possess devices used to smoke marijuana. For marijuana possessory crimes committed on or after December 6, 2012, the definition of marijuana has changed, such that to prove a possessory crime we must obtain crime laboratory analysis of the substance to show that the substance has a THC concentration greater than 0.3 percent on a dry weight basis, and we must have that analyst available to testify about the result.

a. Misdemeanor Possession of Marijuana

In general, we will rarely prosecute misdemeanor Possession of Marijuana when the offender is 18 years old or older. We will endeavor to prosecute misdemeanor Possession of Marijuana when the offender is younger than 18 years old and the marijuana weighed at least 1 gram.

b. Felony Possession, Possession with Intent to Deliver, Manufacture, or Delivery of Marijuana

We will continue to charge cases involving the sale/delivery of marijuana to an undercover officer, or to a confidential source if the referring agency confirms that the confidential source may be named and will be available to testify. For felony marijuana cases that do not involve sale/delivery, we will prosecute only if the offender represents a real and present danger to the community if not prosecuted. The latter cases will be judiciously chosen after consultation with the referring law enforcement agency. See Section 9 for more details.

2. Expansion of DUI/In Physical Control law

As of December 6, 2012, it is a crime to drive if the person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood. Likewise, it is a crime to be in physical control of a motor vehicle if the person has, within two hours after being in physical control of the vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood. Prosecution of DUI/In Physical Control, regardless of whether the driving impairment is due to alcohol or drugs, remains a high priority for this office.

As of September 28, 2013, repeat DUI offenders must be arrested and booked. When they first appear before a judge, the judge must impose as a condition of release that the offender install an ignition interlock device, or comply with 24/7 sobriety monitoring, or both. We have adjusted our procedures to rush-file these cases, giving the courts the opportunity to impose these conditions and maintain them both pre- and post-conviction.

3. Expansion of Driving After Consumption When Under 21 law

As of December 6, 2012, it is a crime for a person under the age of 21 to drive or to be in physical control of a motor vehicle after consuming marijuana if the person has, within two hours after operating or being in physical control of the motor vehicle, a THC concentration above 0.00 but less than 5.00. Prosecution of Driving After Consumption When Under 21, regardless of whether the driving impairment is due to alcohol or drugs, remains a high priority for this office.

4. Effect of elimination of bail forfeiture option in District Court

There are some minor misdemeanor crimes that regretfully, we no longer have the resources to prosecute. In the past, we had the option of allowing a bail forfeiture for minor misdemeanor crimes. That option has been eliminated by the legislature, so we must be prepared to go to jury trial on all misdemeanor crimes we file, if the defendant declines to plead guilty. That means a judge, a prosecutor, a law enforcement officer, and often a public-appointed defender are in court for a day, when they could be working on higher priority matters. There are always exceptional cases that need to be dealt with as a criminal charge. But often, these more minor crimes can be adequately dealt with as civil infractions. See Section 7 for more details.

A handwritten signature in blue ink, appearing to read 'Mark K. Roe', is positioned above the printed name.

Mark K. Roe
Snohomish County Prosecuting Attorney



**Snohomish County
Prosecuting Attorney's Office**

Charging and Disposition Standards

Mark K. Roe
Snohomish County Prosecuting Attorney
Adopted September 1, 2005
Updated September 1, 2006
Updated May 1, 2008
Updated September 1, 2009
Updated December 1, 2010
Updated July 1, 2011
Updated May 30, 2014

TABLE OF CONTENTS

CHAPTER ONE GENERAL CHARGING AND DISPOSITION STANDARDS.....	1
1.00 PURPOSE	1
1.01 GENERAL PRINCIPLES	1
1.02 EXCEPTIONS	2
1.03 APPLICATION	3
1.04 REVISIONS	3
1.05 CONSTRUCTION.....	3
1.06 DEPUTY PROSECUTOR CONSULTATIONS	3
CHAPTER TWO GENERAL CHARGING STANDARDS	4
2.00 GENERAL CHARGING PROCESS	4
A. The Selection of Accurate and Adequate Charges	4
B. The Basic Evidentiary Standards	4
C. Other Ethical/Professional Considerations	5
D. Prohibited Factors.....	7
E. Factors Which are Insufficient, Standing Alone.....	8
2.01 NUMBER AND DEGREE OF CHARGES	9
A. Initial Charges	9
B. Single Incidents	9
C. Multiple Incidents of Crime	9
2.02 CHARGING ONLY AFTER COMPLETE INVESTIGATIONS	10
A. Initial Investigation	10
B. Subsequent Investigation	11
C. Scope of Prosecutorial Review.....	12
2.03 JOINDER AND VENUE	13
2.04 JOINDER OF MISDEMEANORS AND FELONIES.....	13
2.05 REVIEW OF PARTICULARLY SENSITIVE CASES	14
2.06 CONFLICTS OF INTEREST.....	14
2.07 CHARGES BASED UPON EVIDENCE OBTAINED BY SEARCH WARRANTS.....	15
2.08 POLICE/VICTIM INPUT.....	16
2.09 CASES INVOLVING INFORMANTS	16
CHAPTER THREE GENERAL DISPOSITION STANDARDS.....	17
3.00 ALL PLEA AGREEMENTS TO BE HONORED.....	17
3.01 ALL PLEA DISCUSSIONS SHALL BE CONDUCTED THROUGH DEFENSE COUNSEL AND IN AN APPROPRIATE BUSINESS SETTING.....	18
3.02 GENERAL PLEA DISCUSSION PROCESS	18
3.03 CONSISTENT ACCOUNTABILITY FOR CO-DEFENDANTS	20
3.04 STIPULATIONS.....	20
3.05 CONTINUANCES	20
3.06 STAYS OF PROCEEDINGS	20
CHAPTER FOUR GENERAL STANDARDS PERTAINING TO SENTENCING RECOMMENDATIONS 21	
4.00 GENERAL ROLE OF PROSECUTOR AT SENTENCING	21
4.01 RECOMMENDATIONS FOR INCARCERATIONS	21
4.02 RECOMMENDATIONS FOR COMMUNITY RESTITUTION	22
4.03 RECOMMENDATIONS REGARDING PAYMENT OF FINES AND COSTS	22
4.04 RECOMMENDATIONS REGARDING RESTITUTION	22
4.05 RECOMMENDATIONS CONCERNING TREATMENT	23
CHAPTER FIVE STANDARDS PERTAINING TO POLICE / VICTIM COMMUNICATIONS.....	24
5.00 DISPOSITION FEEDBACK	24
5.01 CLOSED FILE PROTOCOL	24
5.02 CONTINUING PROCEDURAL DIFFICULTIES.....	24
5.03 INAPPROPRIATE LAW ENFORCEMENT REFERRALS.....	24
5.04 COMMUNICATIONS WITH VICTIMS, VICTIM SURVIVORS, AND WITNESSES.....	24

CHAPTER SIX DISTRICT COURT CHARGING STANDARDS	29
6.00 OFFENSES AND EVIDENTIARY STANDARDS	29
6.01 MULTIPLE CHARGES BASED UPON THE SAME FACT PATTERN.....	29
6.02 CITIZEN COMPLAINTS	30
6.03 VIOLATIONS OF MUNICIPAL LAW.....	30
6.04 DOMESTIC VIOLENCE CASES	31
CHAPTER SEVEN DISTRICT COURT DISPOSITION STANDARDS.....	32
7.00 INTRODUCTION	32
7.01 DEFERRED PROSECUTION.....	32
A. It should be made available only to defendants:	32
B. Guidelines for Concurrence	33
C. Exceptions	34
D. Approved Treatment Agencies	34
E. Objections	35
7.02 MENTAL HEALTH COURT	35
A. Statutory Minimum Requirements for Eligibility, RCW 2.28.180	35
B. Additional Requirements for Eligibility	35
7.03 COMPROMISE OF MISDEMEANORS	38
7.04 AGREEING NOT TO FILE RELATED CHARGES	38
7.05 FINES AND COSTS	38
7.06 RESTITUTION	39
7.07 DRIVING WHILE LICENSE SUSPENDED/REVOKED (RCW 46.20.342)	39
7.08 DEPARTMENT OF FISH AND WILDLIFE CASES	40
A. Filing as an Infraction.....	40
B. Filing as a Criminal Charge	41
C. Dispositions.....	41
7.09 MISDEMEANOR POSSESSION OF MARIJUANA	42
7.10 UNLAWFUL TRANSIT CONDUCT	42
7.11 VEHICLE LICENSING AND REGISTRATION OFFENSES.....	43
7.12 LITTERING	43
7.13 THIRD DEGREE THEFT	43
7.14 DOMESTIC VIOLENCE OFFENSES	43
CHAPTER EIGHT DISTRICT COURT SENTENCING RECOMMENDATION STANDARDS	44
8.00 MAXIMUM SENTENCES	44
8.01 RECOMMENDATIONS FOR CONCURRENT AND CONSECUTIVE SENTENCES	44
8.02 GUIDELINES FOR RECOMMENDING PROBATIONARY SENTENCES	44
A. Deferred and Suspended Sentences	45
B. Deferred Findings	46
8.03 GUIDELINES FOR SPECIFIC RECOMMENDATIONS	47
A. Driving Under The Influence (GM, 46.61.502).....	48
B. Physical Control (GM, RCW 46.61.504).....	51
C. Minor Driving After Consumption (Misd., RCW 46.61.503).....	52
D. Negligent Driving First Degree (Misd, RCW 46.61.5249).....	53
E. Negligent Driving Second Degree (Infraction, RCW 46.61.525)	54
F. Reckless Driving (GM, RCW 46.61.500).....	55
G. Hit And Run Attended (GM, RCW 46.52.020)	56
H. Hit And Run Unattended/Property Damage (M, RCW 46.52.010)	57
I. Driving Without Ignition Interlock (GM, RCW 46.20.740)	58
J. Driving While License Revoked 1st Degree (GM, RCW 46.20.342 (1)(a))	59
K. Driving While License Suspended 2nd Degree (GM, RCW 46.20.342 (1)(b))	60
L. Assault 4th Degree (GM, RCW 9A.36.041).....	61
M. Violation Of Protection Order (GM, RCW 26.50.110).....	62
N. Harassment (GM, RCW 9A.46.020)	63
O. Reckless Endangerment (GM, 9A.36.050).....	64
P. Firearm and Weapon Violations (GM or M, RCW 9A.41).....	65
Q. Malicious Mischief – Third Degree (GM, RCW 9A.48.090)	66

R.	Theft Third Degree (GM, 9A.56.050) and Possession Of Stolen Property Third Degree (GM, 9A.56.140)	67
S.	Criminal Trespass – First Degree (GM, 9A.52.070)	68
T.	Criminal Trespass Second Degree (M, RCW 9A.52.080)	68
U.	Resisting Arrest (M, RCW 9A.76.040)	69
V.	Obstructing (GM, 9A.76.020) or Making a False Statement (9A.76.175)	70
W.	Refusal To Give Information Or Cooperate/Refusal To Obey Law Enforcement Officer (M, RCW 46.61.020, RCW 46.61.021)	70
X.	Minor In Possession GM RCW 66.44.270(2)(a)	72
Y.	Minor Purchasing Or Attempting To Purchase Liquor (M, RCW 66.44.290)	72
Z.	Minor Exhibiting The Effects Of Having Consumed Liquor (M, 66.44.270(2)(b))	73
BB.	Vehicle Prowling 2nd Degree (GM, 9A.52.100)	75
CC.	Prostitution (M, RCW 9A.88.030)	76
DD.	Patronizing A Prostitute (M, RCW. 9A.88.110)	76
EE.	Bail Jumping (M, RCW 9A.76.170(1))	78
CHAPTER NINE SUPERIOR COURT CHARGING AND DISPOSITION STANDARDS		80
9.00	INTRODUCTION	80
9.01	FOLLOW-UP REQUESTS AND DECLINES	81
A.	Deadline cases, SAU, Violent and Domestic Violence Cases	81
B.	Non-deadline Non-violent and Drug Cases	81
C.	Procedure—Reconsideration of Decline	82
D.	Notice to Victim	82
E.	Concurrent Federal Jurisdiction	82
F.	Decline in Favor of Misdemeanor Prosecution	82
9.02	EXPEDITED CRIMES	83
A.	Eligibility of Non-Violent Felony Offenses for Expediting	83
B.	Eligibility of Drug Felony Offenses for Expediting	84
E.	Charge Selection	85
F.	Venue	85
G.	Demand for Preliminary Hearing	85
H.	Discovery	85
I.	Disposition	85
9.03	TREATMENT ALTERNATIVES TO PROSECUTION (DIVERSION PROGRAM)	87
A.	Current Offenses Excluded From TAP:	88
B.	Eligibility Requirements for Offenders	89
9.04	FILING	91
9.05	DEADLY WEAPON AND FIREARM ALLEGATIONS (See RCW 9.94A.825, 9.94A.470, 9.94A.533, AND 9.41.010(7))	92
A.	Definition of Deadly Weapon	92
B.	When Alleged—General Provisions	92
C.	When Alleged—Deadly Weapon Allegation	93
D.	When Alleged—Firearm Allegation	93
E.	When Not Filed or Dismissed	94
9.06	SENTENCE RECOMMENDATION	94
A.	Procedure	94
B.	Sentence Recommendation	94
9.07	CRITERIA FOR REFERRAL TO ADULT DRUG TREATMENT COURT	102
A.	Current Offenses Excluded From ADTC:	103
B.	Eligibility Requirements For Defendants	104
9.08	PROCEDURES PENDING TRIAL	106
A.	Arraignment to Entry of Omnibus Order	106
B.	Revocation of Initial Plea Offer	106
9.09	EXCEPTIONS TO STANDARDS	107
A.	Procedure	107
B.	Dismissal of Charges	107
C.	Charge Reduction	108

D.	Deviation from Standard Sentence Recommendation	108
9.10	CASES NOT COVERED BY POLICIES.....	110
9.11	VIOLENT CRIMES	110
A.	Homicide	110
B.	Assault	112
C.	Kidnapping.....	114
D.	Robbery	116
9.12	DOMESTIC VIOLENCE CRIMES	117
A.	Evidentiary Sufficiency.....	117
B.	Charge Selection	118
C.	Charge Reduction/Dismissal	121
D.	Sentence Recommendation	121
E.	Post-Sentencing Review.....	122
F.	TAP and Domestic Violence Cases.....	123
G.	Adult Drug Treatment Court and Domestic Violence Cases	124
9.13	SPECIAL ASSAULT CRIMES	125
A.	Evidentiary Sufficiency.....	125
B.	Charge Selection	126
C.	Disposition	131
9.14	PROPERTY AND OTHER CRIMES.....	134
A.	Burglary.....	134
B.	Arson and Malicious Mischief	139
C.	Theft and Fraud Related Crimes	140
D.	Escape	150
E.	Unlawful Possession of Firearm	151
F.	Persistent Prison Misbehavior	152
9.15	FELONY TRAFFIC OFFENSES.....	154
A.	Evidentiary Sufficiency.....	154
B.	Charge Selection	154
C.	Charge Reduction/Dismissal	155
D.	Sentence Recommendation	155
9.16	DRUG CRIMES	156
A.	Evidentiary Sufficiency.....	156
B.	Charge Selection	158
C.	Drug Court Referral or TAP Referral	164
D.	Sentence Recommendation	164
9.17	PERSISTENT OFFENDERS (THREE STRIKES/TWO STRIKES OFFENSES)	167
9.18	SENTENCE MODIFICATION FOR NON-COMPLIANCE	167
A.	Court's Authority	167
B.	Role of the Prosecutor	167
C.	Prosecutor's Recommendation	168
9.19	APPEAL OF JUDGMENT AND SENTENCE	169
A.	Procedure for State's Appeal.....	169
9.20	PRETRIAL AND POST-TRIAL RELEASE.....	169
A.	Prosecutor's Recommendation Regarding Release	169
B.	Additional Conditions of Release.....	172
	CHAPTER TEN JUVENILE COURT CHARGING AND DISPOSITION STANDARDS	173
10.00	GENERAL PRINCIPLES	173
10.01	THE SCREENING DECISION.....	173
A.	Number of Counts Filed.....	173
B.	When the Offender or Witnesses are No Longer in the County	174
C.	Offenders Under Age 12.....	175
D.	Multiple Pending Charges.....	175
E.	Lead DPA Review.....	175
F.	Cases in which the parent is the victim	175
10.02	ALLEGING PRIOR CRIMINAL HISTORY	176

10.03	DIVERSION	176
A.	Introduction	176
B.	Diversion Standards	177
10.04	DECLINES TO ADULT COURT	178
A.	The Filing Decision	178
B.	State's Position on Decline	179
10.05	DISPOSITION.....	181
A.	Reduction or Dismissal of Counts	181
B.	Disposition Recommendation Within Standard Range	182
C.	Limitation on Community Service Hours	182
D.	Mainifest Injustice	183
E.	Deferred Dispositions	184
F.	Restitution	185
10.06	JUVENILE DRUG COURT	186
10.07	HOMICIDE.....	186
10.08	ASSAULT.....	187
A.	Evidentiary Sufficiency.....	187
B.	Interviews.....	187
C.	Assault in the Second Degree, RCW 9A.36.021	187
D.	Assault in the Third Degree, RCW 9A.36.031	188
E.	Misdemeanor Assaultive Conduct	188
10.09	SEXUAL ASSAULTS.....	190
A.	See Standard 9.13.....	190
B.	Sentence Recommendation – Standard Range.....	190
C.	Special Sexual Offender Disposition Alternative (SSODA).....	190
10.10	ROBBERY	191
10.11	BURGLARY	192
10.12	ARSON, RECKLESS BURNING AND MALICIOUS MISCHIEF	192
10.13	TRAFFIC STANDARDS	193
10.14	THEFT AND RELATED OFFENSES	193
10.15	ESCAPE STANDARDS.....	194
10.16	CONTROLLED SUBSTANCES.....	194
A.	Felony drug crimes	194
B.	Misdemeanor Possession of Marijuana.....	194
10.17	ALCOHOL OFFENSES	195
A.	Possession.....	195
B.	Consumption.....	195
C.	Exceptions: When Minors May Possess or Consume Alcohol, RCW 6.44.270.....	195
10.18	KIDNAPPING STANDARDS	196
10.19	CONSIDERATIONS REGARDING DETENTION AND RELEASE	196
10.20	PLEA NEGOTIATIONS AND DISPOSITIONS.....	196
	APPENDIX A ADULT FELONY SENTENCING GRID	199
	APPENDIX B ADULT FELONY DRUG SENTENCING GRID.....	201
	APPENDIX C JUVENILE OFFENDER SENTENCING STANDARDS	202
	APPENDIX D DUI SENTENCING GRID	211
	APPENDIX E COMMUNITY CUSTODY GRID	212
	APPENDIX F SPECIAL RESPONSIBILITIES OF A PROSECUTOR, RPC 3.8	216

CHAPTER ONE

GENERAL CHARGING AND DISPOSITION STANDARDS

1.00 PURPOSE

These Standards are intended to govern the charging and disposition of cases in District and Superior Court, including those that involve juvenile offenders. They are intended solely for the guidance of Deputy Prosecutors.

These Standards are not intended, do not, and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law, by a party in litigation with the Snohomish County Prosecuting Attorney's Office.

These Standards are guidelines only and do not replace or diminish the responsibility of each Deputy Prosecutor to seek justice by exercising his/her discretion in consultation with his/her supervisor, in a fair and reasonable manner in every instance.

1.01 GENERAL PRINCIPLES

Any set of standards must recognize that exceptions will be necessary. The purpose of these guidelines is not to impose rigid restrictions on Deputy Prosecutors but to articulate principles that will serve as benchmarks to guide Deputy Prosecutors in their decision-making process. When an individual case presents factors, which would make application of a general standard unjust, it should be acknowledged as an exception and managed accordingly. These Standards call for all exceptions to be set forth in writing. This process of stating the general standard and requiring written justification for departures, promotes responsible and consistent decision making.

Like any set of standards, these involve the setting of priorities. These priorities reflect the fact that some crimes are more serious than others (thus worthy of more official resources) and that public resources are always limited. Choices must be made. These Standards ensure that those priorities are stated openly so that they may be applied evenly.

These Charging and Disposition Standards are not meant to be a static document. As DPAs gain experience with the effect of these Standards in practice and as conditions change, this office's guidelines will evolve. Through this process of constant re-examination, this office will ensure that these Standards best serve the public trust—a trust that is involved in each decision this office makes.

- A. General principles guiding the Charging Standards: The Prosecuting Attorney's Office may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law.
- B. General principles guiding the Disposition Standards: The Disposition Standards set forth herein assume that there exists sufficient admissible evidence to support a conviction of the crime charged. There will be cases, however, that appear to be strong at the time of filing, but that later develop proof problems. Witnesses may become unavailable to testify; evidence may be ruled inadmissible because of the manner in which it was acquired; evidence supporting a legal defense may come to light; or any myriad other difficulties may surface. These situations are impossible to predict in advance and must be addressed on a case-by-case basis. Frequently, these situations make compromise a more desirable alternative than proceeding to trial with a case that may be lost. These standards permit such compromises when they are supported by written reasons. In all serious crimes against persons, the compromise must also be discussed with the victim. In this way this office seeks to ensure flexibility that is necessary to address developing problems, but guarantee that a written review and approval process is followed when real proof difficulties warrant a proposed compromise.

1.02 EXCEPTIONS

For purposes of consistency, it is the goal of the Snohomish County Prosecuting Attorney's Office to only depart from these Standards when:

- A. The Deputy Prosecutor has fully stated in writing in the file the justification for the departure; and
- B. The Deputy Prosecutor has obtained prior approval from his/her supervising attorney, the Chief Criminal Deputy or the Prosecuting Attorney (in that order); and
- C. In any discussion with defense counsel, it has been made clear that no proposed exception will be binding until it has been approved pursuant to this Standard (unless such prior approval cannot be obtained as a practical matter. When prior approval cannot practically be obtained, the Deputy Prosecutor shall advise his/her supervising attorney of the unusual

action taken and the reasons therefore as promptly as reasonably possible).

1.03 APPLICATION

These Standards shall govern the disposition of all matters handled by this office regardless of whether:

- A. Charges are filed by the police or a Deputy Prosecutor;
- B. The accused is represented by counsel or is appearing *pro se*;
- C. A jury or non-jury trial has been demanded; or
- D. Charges are pending retrial as a result of an appeal or mistrial.

1.04 REVISIONS

These Standards may be revised without notice at any time by the Prosecuting Attorney. The Prosecuting Attorney shall consider all recommendations to revise or supplement these Standards whether submitted by Deputy Prosecutors, office staff, the police, the judiciary, the defense bar, or the public.

1.05 CONSTRUCTION

- A. These Standards are to be read and construed as a whole and where particular Standards conflict, the more specific shall govern.
- B. The Standards within Chapter One, “General Provisions,” shall apply to cases handled within any unit of the Criminal Division. The Standards within the sections pertaining to “Superior Court,” “District Court,” and “Juvenile Court” shall apply to cases prosecuted within those respective units only.

1.06 DEPUTY PROSECUTOR CONSULTATIONS

All Deputy Prosecutors are encouraged to consult with each other, their supervising attorney, the Chief Criminal Deputy and/or the Prosecuting Attorney whenever there is doubt as to the appropriate exercise of their discretion under these Standards—whether at the charging, disposition, or sentencing recommendation level. Consultation should take place with the Chief Criminal Deputy before major decisions are made in very serious cases.

CHAPTER TWO GENERAL CHARGING STANDARDS

2.00 GENERAL CHARGING PROCESS

A. The Selection of Accurate and Adequate Charges

A Deputy Prosecutor should file charges that accurately and adequately describe the nature of a defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges either (1) will significantly enhance the strength of the State's case at trial, or (2) will result in restitution to all victims. The Deputy Prosecutor should not overcharge to obtain a guilty plea. Overcharging includes both (1) charging a higher degree, and (2) charging additional counts. This Standard is intended to direct Deputy Prosecutors to charge those crimes that demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes that do not demonstrate the nature and seriousness of a defendant's criminal conduct. Crimes that do not merge as a matter of law, but that arise from the same course of conduct, do not all have to be charged.

B. The Basic Evidentiary Standards

The Deputy Prosecutor shall first determine which charges, if any, are justified by the available evidence. It is unprofessional conduct for a Deputy Prosecutor to institute charges when he/she knows that the charges are not supported by probable cause.

1. Crimes against persons may be charged if sufficient admissible evidence exists, which when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a conviction by a reasonable and objective fact finder. See RCW 9.94A.411(2)(a). This standard should not be construed to authorize the filing of charges in situations when there is little or no chance of conviction.
2. All crimes against property and other crimes may be charged if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised. See RCW 9.94A.411(2)(a).

C. Other Ethical/Professional Considerations

In the event that a particular charge may be filed pursuant to the Evidentiary Standards set forth above, the Deputy Prosecutor must then determine whether the filing of that particular charge will appropriately help achieve the Prosecuting Attorney's paramount duty, which is to seek justice. "A Prosecuting Attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law." RCW 9.94A.411(a). The following reasons not to prosecute, or to dismiss a pending prosecution, are illustrative.

1. Contrary to Legislative Intent - It may be proper to decline to charge when the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute. RCW 9.94A.411(1)(a).
2. Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:
 - a. It has not been enforced for many years;
 - b. Most members of society act as if it is no longer in existence;
 - c. It serves no deterrent or protective purpose in today's society; and
 - d. The statute has not been recently reconsidered by the Legislature. This final reason is not to be construed as a basis for declining cases where the law in question is unpopular or difficult to enforce. RCW 9.94A.411(1)(b).
3. Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:
 - a. Assault cases where the victim has suffered little or no injury;
 - b. Crimes against property, not involving violence, where no major loss was suffered; and
 - c. Where not charging would not jeopardize the safety of society.

Care should be taken to ensure that the victim's request is freely made and is not the product of threats or pressure by the accused. RCW 9.94A.411(1)(i).

This standard is normally inapplicable in domestic violence cases because of the community's interest in prosecuting this conduct, even if the victim is reluctant to cooperate.

4. Immunity - It may be proper to decline to charge when immunity is to be given to an accused in order to prosecute another when the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest. RCW 9.94A.411(1)(h). Immunity may only be granted with the approval of the Prosecuting Attorney or his/her designee.
5. *De Minimis* Violation - It may be proper to decline to charge when the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution. RCW 9.94A.411(1)(c).
6. Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and
 - a. Conviction of the new offense would not merit any additional direct or collateral punishment;
 - b. The new offense is either a misdemeanor or a felony which is not particularly aggravated, and
 - c. Conviction of the new offense would not serve any significant purpose. RCW 9.94A.411(1)(d).
7. Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another jurisdiction; and
 - a. Conviction of the new offense would not merit any additional direct or collateral punishment;
 - b. Conviction in the pending prosecution is imminent;
 - c. The new offense is either a misdemeanor or a felony that is not particularly aggravated; and

- d. Conviction of the new offense would not serve any significant deterrent purpose. RCW 9.94A.411(1)(e).
- 8. High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting prosecution witnesses, or the burden on those witnesses, is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases. RCW 9.94A.411(1)(f).
- 9. Staleness - It may be proper to decline to charge because a long period of time has elapsed between the offense date and the time when the prosecution decision is made. This reason should be limited to cases where the safety of society would not be jeopardized by a decision not to prosecute.
- 10. Other Appropriate Sanctions Available - In some cases there are adequate sanctions available that do not necessitate the filing of charges. Examples of such sanctions include the imposition of sanctions by an employer and the satisfactory completion of a prosecution diversion program.
- 11. Improper Motives of Complainant - It is proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law. See RCW 9.94A.411(1)(g).
- 12. Other Factors - Other factors may exist which justify a decision not to prosecute. When such factors affect a filing decision, those factors should be articulated in writing in the file.

D. Prohibited Factors

The following factors shall not be considered in determining whether to charge or decline to charge, unless the factor constitutes an element of the offense:

- 1. The race; religion; nationality; gender; sexual orientation; marital status; age; physical ability; occupation; immigration status; economic class; political; or social association; or position of the victim, witnesses or accused;
- 2. Public, media, or political pressure to charge or not to charge; and

3. The possible effect of the decision on the Deputy Prosecutor's own professional or personal circumstances.

E. Factors Which are Insufficient, Standing Alone

The following factors, standing alone, are insufficient to justify a decision to decline to charge or to file a lesser charge than would adequately and accurately describe the misconduct of the defendant:

1. Restitution - It is improper to decline to charge solely because the accused made or tendered restitution to the victim.
2. Extradition not warranted - It is improper to decline to charge solely because extradition is necessary to obtain jurisdiction over the accused person.
3. Relation of accused and victim - The victim and the accused are related.
4. Unpopular statute - The statute is an unpopular one with a segment of the local population, the local judiciary, or even the Deputy Prosecutor.
5. Lack of Criminal Justice System resources - It is improper to refuse to file charges solely because doing so would contribute toward court congestion or prosecutorial overload.
6. Victim's future cooperation is problematic - The Deputy Prosecutor should take steps to promote victim cooperation, such as explaining to the victim his/her legal obligation as a witness and the fact that the case is being prosecuted by the State, not by the victim. (Nothing in this Standard, however, should be viewed as preventing the Deputy Prosecutor from considering the victim's present lack of cooperation as a factor in determining whether the case can be successfully prosecuted under Standard 2.00 or 3.02(B)).
7. Severe impact on the accused or his/her family - The prosecution will have a severe impact on the accused or his/her family. For instance, the collateral effect that a charge or conviction may have on a defendant's employment, immigration status, or acceptance into the military is normally irrelevant to the charging and disposition decision.

2.01 NUMBER AND DEGREE OF CHARGES

A. Initial Charges

The counts and degree of charges initially filed shall adequately and accurately reflect the nature of the defendant's criminal conduct for which there is sufficient admissible evidence. The initial filing shall be conservative in degree and the number of counts, and the defendant normally will be expected to plead guilty to the initial charges or go to trial. The case shall not be overcharged (i.e., charging higher degree or more counts that are not supported by admissible evidence) to gain a guilty plea. Generally, when there is sufficient admissible evidence to support multiple counts, an initial charging decision including an agreement to make restitution on both charged and uncharged crimes, should sufficiently reflect the scope of the defendant's criminal conduct. When a defendant's offender score reaches the highest level with only one or two counts charged, the Deputy Prosecutor may charge only one or two counts, and offer not to add the additional provable counts for an agreement to real facts and to restitution for the additional provable counts.

B. Single Incidents

The Deputy Prosecutor should file all applicable charges relating to a single criminal transaction that are necessary to adequately and accurately describe the transaction in question, provided there is sufficient admissible evidence as to each charge. More than one charge should only be filed when the additional charge(s) accurately portrays significant independent misconduct.

C. Multiple Incidents of Crime

1. Different crimes - When a defendant has committed different types of crimes over a period of time, a separate count for each offense shall normally be filed. In the event that the number of crimes is so excessive as to constitute a waste of resources, sufficient counts should be charged to adequately portray the relative aggravation of the defendant's conduct.

2. Identical crimes

- a. Crimes against persons - When a defendant has committed a series of identical crimes against persons in a short period of time, the defendant should be charged with sufficient counts to adequately describe his conduct with respect to each victim. If any of these crimes was committed as part of a single incident, they may be combined, for purposes of the defendant entering a guilty plea, in one count that names each individual victim.
- b. Crimes against property/other crimes - When a defendant has committed a series of identical crimes against property in a short period of time, the defendant should be charged with a sufficient number of counts to clearly reflect that his/her conduct involved multiple offenses. In those situations where the defendant agrees to plead guilty to a lesser number of counts (typically 3 to 5 counts) and agrees to make restitution for all provable crimes whether charged or uncharged, there is little utility in requiring resolution of every incident. If the defendant does not agree to plead guilty, sufficient counts should be charged to adequately describe the nature of the defendant's conduct with respect to each incident. This will ensure that all victims have the opportunity to receive restitution.

2.02 CHARGING ONLY AFTER COMPLETE INVESTIGATIONS

A Deputy Prosecutor is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The Deputy Prosecutor shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances, the investigation should include the following:

A. Initial Investigation

The following matters should be covered by an initial pre-charging investigation:

1. All material witnesses should be interviewed where possible, preferably in person by trained police investigators. Signed statements should be obtained by witnesses. These written statements should be clear and detailed, covering the witnesses'

knowledge with respect to all elements of the crimes being investigated. Each law enforcement officer who was involved in the investigation should submit a report and/or written statement.

2. Scientific examinations essential to proving the crime should be completed as expeditiously as possible. A notable exception is the crime lab analysis of most seized controlled substances, which are submitted for testing after the case is charged and only if the case appears to be headed for trial. Scientific examinations that are not essential to proving the crime, but which may be expected by a jury, may be requested by the trial DPA after the crime has been charged and when the case appears to be headed to jury trial.
3. An attempt should be made, in accordance with constitutional guidelines, to obtain a statement from the accused. Such statements should be signed or taped whenever feasible.
4. When the accused makes a statement that, if true in whole or in part, negates criminal liability, the statement should be investigated, if possible, no matter how implausible it may seem. (If such statements are true, they may exculpate an innocent person; if false, they may constitute evidence of the accused's guilt.) Written statements of potential defense witnesses should be obtained and signed whenever possible.
5. The Deputy Prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:
 - a. Polygraph testing;
 - b. Hypnosis;
 - c. Electronic surveillance;
 - d. Use of informants; and
 - e. Pre-Filing discussion with the defendant.

B. Subsequent Investigation

If the initial investigation appears significantly incomplete for any reason, the Deputy Prosecutor should insist on subsequent investigation by the law enforcement agency to correct any major deficiencies.

1. A complete investigation normally should be done before charges are filed, even if it means that the accused must be released from custody and later summoned into court.
2. “Deadline” cases: A charge may be filed before the investigation is complete, when an accused person is arrested and booked in the jail, and the filing of a charge is deemed necessary to hold the person in custody, on bail, or on personal recognizance conditions. The threshold requirements for filing a case as a deadline are:
 - a. Probable cause exists to believe the accused is guilty; and
 - b. The suspect, if released from custody, is likely to commit a violent offense, is likely to intimidate witnesses or otherwise interfere with the administration of justice, or is likely to fail to appear for future court hearings. See CrR 3.2; CrRLJ 3.2.

When filing a case on a “deadline” basis, the Deputy Prosecutor shall insist on prompt subsequent investigation by the law enforcement agency to correct any major deficiencies. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed. The Deputy Prosecutor should set a reasonable deadline for the completion of the investigation. See RCW 9.94A.411.

3. The responsibility for carrying out this subsequent investigation lies with the investigating law enforcement agency, not the Deputy Prosecutor.

C. Scope of Prosecutorial Review

The Deputy Prosecutor should do the following before deciding whether to charge:

1. Review all available police reports and witness statements. The Deputy Prosecutor should not file a case upon oral presentation alone.
2. Require oral or written reports on relevant scientific examinations unless the result is almost certain or the result would not affect the decision to charge.

3. Carefully review all defense statements and consider the plausibility of likely defenses to be raised.
4. For person crimes, when practical, personally interview the victim and key witnesses whose cooperation with prosecution is doubtful or whose demeanor and credibility will significantly affect the outcome of the case.
5. Insist that the investigation conform to the guidelines of Standard 2.02(B) or refer the case back for further investigation.
6. Consider the likelihood of the defendant testifying at trial, such that suppressed evidence and/or prior crimes of dishonesty may be used as impeachment to overcome reasonable doubt.

2.03 JOINDER AND VENUE

All charges shall be filed in accordance with the applicable rules and statutes pertaining to joinder and venue. Whenever possible, charges and defendants shall be joined for trial unless there are compelling tactical reasons not to do so.

2.04 JOINDER OF MISDEMEANORS AND FELONIES

- A. When law enforcement agencies refer a criminal incident to the office for a felony charging decision, related misdemeanor or gross misdemeanor charges should not be filed separately by the law enforcement agency.
- B. The Deputy Prosecutor generally should not join misdemeanors or gross misdemeanors with felonies except in the situations described below:
 1. The evidence relating to the misdemeanor directly or indirectly strengthens the evidence relating to the felony.
 2. The commission of the conduct proscribed by the misdemeanor statute demonstrates the aggravated nature of the conduct proscribed by the felony statute.
 3. Conviction on the misdemeanor charge carries significant punitive consequences for the accused in addition to the likely consequence(s) of a felony conviction. These consequences may be prospective only.
 4. The misdemeanor charge involves conduct constituting a significant invasion of the rights of others.

5. There is a reasonable possibility that a jury might not convict on the felony count even though Standard 2.00 has been satisfied in deciding whether to charge.
6. DUI/In Physical Control shall be charged when committed with a felony offense, unless the DUI is included as an element of the felony crime.

2.05 REVIEW OF PARTICULARLY SENSITIVE CASES

Before charges are filed or declined in particularly sensitive cases, such as those involving high publicity or suspects in positions of public trust, the Deputy Prosecutor shall consult with the Chief Criminal Deputy or Prosecuting Attorney to ensure that these Standards are followed. The Deputy Prosecutor's supervising attorney should also be consulted if there is any question as to an appropriate charging or disposition decision in any given case.

2.06 CONFLICTS OF INTEREST

The Deputy Prosecutor should refrain from participating in any charging or disposition decision in which a conflict or potential conflict of interest will arise. Situations in which there is a conflict or potential conflict include: the Deputy Prosecutor is the accused, the victim, or a witness in a case, or a close friend or family member of the Deputy Prosecutor is the accused, the victim, or a witness in a case. In any such case, the Deputy Prosecutor immediately shall so advise the Chief Criminal Deputy or Prosecuting Attorney. The Chief Criminal Deputy or the Prosecuting Attorney shall decide on a case-by-case basis whether there is an actual conflict, and whether the appearance of a conflict can be eliminated by screening the Deputy Prosecutor from any involvement in the case. Only the Chief Criminal Deputy or the Prosecuting Attorney shall have the authority to request another county prosecutor's office or the Attorney General's Office to handle the case, if there is a conflict or potential conflict of interest.

When it is brought to the attention of the Deputy Prosecutor assigned to the case that a Deputy Prosecutor or former Deputy Prosecutor, a support staff member or former support staff member, or a court staff member or former court staff member is the accused, the victim, or a witness, or that a close friend or family member of a Deputy Prosecutor or former Deputy Prosecutor, a support staff member or former support staff member, or a court staff member or former court staff member is the accused, the victim, or a witness, the assigned Deputy Prosecutor shall consult with his/her supervisor to determine whether that creates a conflict or a potential conflict of interest for the office as a whole. Often, screening the individual in question from involvement in

the prosecution of the case will be sufficient to prevent an actual conflict and to prevent the appearance of a conflict. The assigned Deputy Prosecutor shall obtain a supervisor's approval for avoiding the conflict by screening the individual from involvement in the case. If after consultation with the supervisor the assigned Deputy Prosecutor concludes that another course of action must be taken, the matter will be brought to the attention of the Chief Criminal Deputy or the Prosecuting Attorney. Only the Chief Criminal Deputy or the Prosecuting Attorney shall have the authority to request another county prosecutor's office or the Attorney General's Office to handle the case, if there is a conflict or potential conflict of interest.

When a law enforcement officer (current or former) or a close friend or family member of a law enforcement officer is the accused, the assigned Deputy Prosecutor shall consult with his/her supervisor to determine whether that creates a conflict or a potential conflict of interest for the office as a whole. Normally, if the assigned Deputy Prosecutor previously has not worked with the law enforcement officer, there will not be a conflict or potential conflict. The assigned Deputy Prosecutor shall obtain a supervisor's approval for avoiding a conflict or potential conflict by screening individuals who have worked closely with the officer from involvement in the case. If after consultation with the supervisor the assigned Deputy Prosecutor concludes that another course of action must be taken, the matter will be brought to the attention of the Chief Criminal Deputy or the Prosecuting Attorney. Only the Chief Criminal Deputy or the Prosecuting Attorney shall have the authority to request another county prosecutor's office or the Attorney General's Office to handle the case, if there is a conflict or potential conflict of interest.

2.07 CHARGES BASED UPON EVIDENCE OBTAINED BY SEARCH WARRANTS

When a search warrant is pre-approved by a DPA from this office, the Prosecutor's Office will defend the search warrant in court, if there is a credible argument to be made that it is legally valid. When evidence has been obtained by a search warrant that was not approved by this office, this office will review the warrant and file charges only if the validity of the warrant is clear or if Standard 2.00 is satisfied without reference to the evidence obtained by the search warrant.

2.08 POLICE/VICTIM INPUT

- A. Upon request, the Deputy Prosecutor shall fully explain his/her basis for the charging decision to police and/or the victim(s).
- B. In homicide and other serious felony crimes against person, the Deputy Prosecutor, when practical, shall initiate a pre-charging meeting with the investigating detective(s) and victim(s) or victim's family. If not practical prior to a charging decision being made, a meeting shall be scheduled as soon as possible after the initial charging decision is made.
- C. Victims, police officers, and defense attorneys who disagree with the Deputy Prosecutor's charging decision shall be advised by the Deputy Prosecutor that they may have the matter reviewed by the Deputy Prosecutor's supervising attorney, the Chief Criminal Deputy and the Prosecuting Attorney, in that order.

2.09 CASES INVOLVING INFORMANTS

Where information obtained from an informant is relied upon to charge or prove a criminal case, and the informant has received or will receive a benefit for the cooperation, the Deputy Prosecutor shall disclose this information to the defense. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

CHAPTER THREE GENERAL DISPOSITION STANDARDS

3.00 ALL PLEA AGREEMENTS TO BE HONORED

- A. The Deputy Prosecutor has a duty to honor a plea agreement made by any other Deputy Prosecutor in the office that has been accepted by the defendant. "Acceptance" occurs only when a plea is entered. After the plea is entered, the Deputy Prosecutor will take action different from that promised in the agreement only under the following circumstances:
 - 1. The defendant has committed new criminal acts since the plea agreement, or new criminal history has been discovered which changes the offender score and the defendant was aware of the criminal history when he/she entered into the plea agreement.
 - 2. The defendant failed to appear for sentencing without a valid excuse.
 - 3. There has been a material breach of the plea agreement, such as the defendant has refused to testify or provide information under circumstances that were part of the plea agreement.
 - 4. The defense made a material misrepresentation of fact that was relied upon by the State in making their plea offer.
- B. As a matter of policy, this office will ordinarily honor plea agreements once defense counsel has advised us that the defendant intends to accept the agreement. An exception to honoring the plea agreement may be warranted if there has been a material mistake of law or fact or the Deputy Prosecutor has become aware of additional criminal history or criminal behavior that the Deputy Prosecutor was not aware of when the plea offer was made. The additional information must be such that the plea offer is not reasonable when the correct information is taken into account.
- C. Any departure from this policy must be resolved as follows:
 - 1. Whenever a Deputy Prosecutor believes that the agreement made cannot or should not be honored, he/she shall attempt to resolve the issue to mutual satisfaction with the defense.

2. If the issue cannot be resolved to the mutual satisfaction of the Deputy Prosecutor and the defense, the Deputy Prosecutor shall refer the issue to the Chief Criminal Deputy and/or Prosecuting Attorney. If the matter still cannot be resolved informally, then:
3. The Deputy Prosecutor shall cause the issue to be heard in open court, and shall state fully the circumstances surrounding the plea agreement as well as the reasons why it should or should not be honored, and shall abide by the court's resolution of the issue.

3.01 ALL PLEA DISCUSSIONS SHALL BE CONDUCTED THROUGH DEFENSE COUNSEL AND IN AN APPROPRIATE BUSINESS SETTING

All plea discussions shall be conducted through defense counsel, if the accused is represented. Further, plea discussions shall only be conducted in an appropriate business setting, and reflect an appropriate business demeanor.

3.02 GENERAL PLEA DISCUSSION PROCESS

Plea discussions shall be conducted according to the following guidelines:

- A. Defendants are generally expected to plead to, or stand trial for, the offense(s) and all counts properly charged under Standard 2.00.
- B. Charges may be dismissed outright, or dismissed or reduced as part of a plea agreement, only for the following rationales:
 1. Unanticipated evidentiary problems make the original charge(s) inappropriate under the evidentiary Standards contained in Standard 2.00 (B);
 2. Other unanticipated professional considerations, as listed in Standard 2.00 (C) preclude a just prosecution of the original charge(s);
 3. Errors in the original charging decision must be corrected;
 4. Potential legal or logistical problems so substantially decrease the likelihood of obtaining a conviction that it is in the public's interest to reduce the charge so as to have at least some sanction imposed upon the defendant for the misconduct in question; or

5. The charges filed under Standard 2.00(A) to significantly enhance the state's case at trial are being dismissed upon the defendant's plea to the offense(s) which accurately and adequately describe the misconduct in question.
- C. The Deputy Prosecutor shall negotiate in good faith with the defense under the terms set forth (or referred to) in Section B above and shall encourage that such discussions be conducted as soon as possible after charges have been filed, and even before the charging decision (if possible).
 - D. In a case involving a crime against persons as defined in RCW 9.94A.411, the Deputy Prosecutor shall make reasonable efforts to inform the victim of the nature of and reasons for a proposed plea agreement different than the original offer, including all offenses the Deputy Prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement. RCW 9.94A.421. If the police or victim(s) disagree with the proposed disposition, they shall be advised of the appeal procedure outlined in Standard 2.08 (C). The Deputy Prosecutor shall advise the court on the record whether the victim(s) in crimes against persons cases, as defined in RCW 9.94A.411 and covered by the plea agreement, have expressed any objections to or comments on the nature of and reasons for the plea agreement. RCW 9.94A.431.
 - E. If the charges are dismissed or reduced, the Deputy Prosecutor shall document in writing the reasons for the dismissal/reduction in the file.
 - F. If a plea offer is extended to the defense, it shall be open for acceptance only for a specified, limited time prior to the trial date so that precious criminal justice resources are not squandered, and witnesses and jurors are not inconvenienced by cases that fail to go to trial as scheduled.
 - G. If a plea agreement is reached, the Deputy Prosecutor shall make every effort to notify the witnesses (including law enforcement officers) that they need not appear. The Deputy Prosecutor shall also advise the court of the case resolution, if such notice will assist the court's ability to effectively manage its docket.

3.03 CONSISTENT ACCOUNTABILITY FOR CO-DEFENDANTS

- A. In the event that equally culpable co-defendants are tried separately, the result of the first trial should be taken into consideration in making a plea offer to the remaining co-defendants. This consideration should include the jury's factual determinations in arriving at the first verdict as well as equitable considerations concerning treating similarly situated defendants in a similar fashion.
- B. Any differences in plea offers made to equally culpable co-defendants should be justified by differences in their criminal history, differences in their amenability to rehabilitation, or by evidentiary factors. These differences should be noted in the file.

3.04 STIPULATIONS

In an effort to reduce the impact on victims and witnesses, and/or in the interest of efficient use of prosecutorial resources, a Deputy Prosecutor may allow the accused to stipulate to facts sufficient for the court to find the defendant guilty as an alternative to a guilty plea or a formal trial. Depending on the strength of the case, the Deputy Prosecutor may consider recommending additional or greater penalties and conditions than would have been recommended for a traditional guilty plea in which the defendant admits guilt.

3.05 CONTINUANCES

Deputy Prosecutors should not seek or concur with, but should strongly oppose continuances, unless they are clearly necessary for the due administration of justice.

3.06 STAYS OF PROCEEDINGS

As a general rule, a Deputy Prosecutor should not stay a charge. Exceptions are that a case may be stayed while pending appellate review and while the accused is participating in a diversion program in which the Prosecutor's Office participates.

CHAPTER FOUR

GENERAL STANDARDS PERTAINING TO SENTENCING RECOMMENDATIONS

4.00 GENERAL ROLE OF PROSECUTOR AT SENTENCING

- A. The primary role of the Deputy Prosecutor at the time of sentencing is to fully apprise the court of all relevant information pertaining to the defendant and the offense so that the court may impose the most appropriate sentence. Sentencing is a judicial function, and while the Deputy Prosecutor may make a sentencing recommendation, it is only a recommendation and is much less important than the articulated factual basis for that recommendation.
- B. As an officer of the court, the Deputy Prosecutor cannot agree to withhold relevant information from the court that would prejudice or benefit the defendant at the time of sentencing. RCW 9.94A.460.
- C. In the plea negotiation process, the Deputy Prosecutor may agree to recommend a particular sentence in return for a guilty plea if the recommended sentence is in accordance with these Standards. Absent extraordinary circumstances, the Deputy Prosecutor will not agree to waive the right to make a sentencing recommendation.
- D. The Deputy Prosecutor should, when practical and when consistent with Standard 5.04, advise the victim and the police of the sentencing date, their right to attend the sentencing and, with the court's permission, their right to address the court with a sentencing recommendation. In the event the victim or the police are unable to attend the sentencing, the Deputy Prosecutor may agree to relay a sentencing recommendation of such a person to the court. For felony convictions, the Deputy Prosecutor shall notify the victim of the sentencing date, the right to submit a victim impact statement in writing, and the right to speak at the sentencing hearing. RCW 7.69.030; Constitution of Washington, Art. 2, Sec. 35.

4.01 RECOMMENDATIONS FOR INCARCERATIONS

- A. Recommendations for the imposition of actual jail or prison time shall be made in accordance with the relevant Standards herein. If the Deputy Prosecutor's recommendation varies from what is indicated by these Standards, the court shall be advised why the sentence by the Standards is inappropriate.

- B. In all cases where the defendant was detained solely as a result of the charge(s) in question, the Deputy Prosecutor shall recommend that the defendant receive credit for time served while pending trial or arraignment on the charge(s) in question.

4.02 RECOMMENDATIONS FOR COMMUNITY RESTITUTION

When appropriate, and when State or County DOC supervision is available, the Deputy Prosecutor may recommend that the defendant be required to perform a given number of hours of supervised community restitution.

4.03 RECOMMENDATIONS REGARDING PAYMENT OF FINES AND COSTS

As a general rule, the Deputy Prosecutor should always recommend the recoupment of attorney fees (where the defendant has had an attorney provided at public expense), court costs, and payment of mandatory fines and assessments. Other fines may be recommended as appropriate. Note that the sentencing judge should have information available to him/her in the court file regarding the defendant's indigency and/or whether the defendant has already signed a promissory note to the office of Public Defense. Where a promissory note has been signed, attorney's fees shall not be ordered.

4.04 RECOMMENDATIONS REGARDING RESTITUTION

- A. When a victim has suffered loss due to the actions of the accused, full restitution should be recommended. Business entities should receive the same consideration as individuals who are victims. Distribution of restitution payments should be proportional to both individual victims and business entity victims, unless the victims agree to an earlier pay-off of one over the other. RCW 9.94A.753(9); State v Kinneman, 155 Wn.2d 272, 289 (2005).
- B. Restitution should be requested for easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for personal injury, and lost wages resulting from injury. Restitution should not be requested for damages of mental anguish, pain and suffering, or other intangible loss.

4.05 RECOMMENDATIONS CONCERNING TREATMENT

The Deputy Prosecutor may recommend treatment as part of the sentence in cases in which a treatable condition is related to the crime committed. A recommendation for treatment should only be made if the compliance with treatment will be monitored by the Department of Corrections, the court's probation department, or directly by the court. If it reasonably appears that the court might benefit from a pre-sentence report or evaluation on the accused (and there are available resources for writing the report), or if a pre-sentence report is required, the Deputy Prosecutor may recommend that sentencing be delayed pending completion of such a report.

CHAPTER FIVE STANDARDS PERTAINING TO POLICE / VICTIM COMMUNICATIONS

5.00 DISPOSITION FEEDBACK

The Deputy Prosecutor shall notify the police agency and primary victim(s) in each case of the case's final disposition and the reasons therefore (either orally or in writing). The communication shall be noted in the file.

5.01 CLOSED FILE PROTOCOL

All closed files shall reflect the final disposition (and the reasons therefore if either the charge or sentence recommendation are an exception to Standards), and the reasons for trial if the case went to jury trial.

5.02 CONTINUING PROCEDURAL DIFFICULTIES

Whenever there appears to be a recurring procedural or investigative difficulty, the Deputy Prosecutor shall notify his/her supervising attorney. The supervising attorney shall, in turn, advise the Chief Criminal Deputy and/or Prosecuting Attorney, who shall then consult with the appropriate law enforcement agency or office member in an effort to resolve the difficulty.

5.03 INAPPROPRIATE LAW ENFORCEMENT REFERRALS

If law enforcement officials or agencies consistently refer cases inconsistent with these Standards, the Deputy Prosecutor shall so notify the Lead Deputy Prosecutor for the unit or the Chief Criminal Deputy Prosecutor, as appropriate.

5.04 COMMUNICATIONS WITH VICTIMS, VICTIM SURVIVORS, AND WITNESSES

- A. With respect to adult victims, there shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights fulfilled and protected (see RCW 7.69.030):
 - 1. With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

2. To be informed of the final disposition of the case in which the victim, survivor, or witness is involved;
3. To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;
4. To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;
5. To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;
6. To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;
7. To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. [Note: Experience shows that, in the case of currency, it is often difficult to determine the true owner, and, in the case of weapons, they are often needed for re-trials.] When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;
8. To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from their court appearances;
9. To have access to immediate medical assistance and to not be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;
10. With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any

judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

11. With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and to not be excluded solely because they have testified;
 12. With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony conviction(s) upon request by a victim or survivor;
 13. To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all pre-sentence reports and permanently included in the files and records accompanying the offender who is committed to the custody of a State agency or institution;
 14. With respect to victims and survivors of victims, to present a statement personally or by representation, at felony sentencing hearings;
 15. With respect to victims and survivors of victims, entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment; and
 16. With respect to victims and survivors of victims, to present a statement in person, via audio or videotape, in writing or by representation at any hearing conducted regarding an application for pardon or commutation of sentence.
- B. With respect to child victims and witnesses, in addition to the goals set forth above, there shall be a reasonable effort made to ensure that the following rights are fulfilled and protected (see RCW 7.69A.030):
1. To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved;

2. With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from the Prosecuting Attorney's Office, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety;
3. To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings;
4. To not disclose the names, addresses, or photographs of living child victims or witnesses, without the permission of the child victims, the child witnesses, their parents, or their legal guardians, to anyone other than another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victims or witnesses;
5. To allow an advocate to make recommendations to the Deputy Prosecutor about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child;
6. To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings;
7. To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and the judicial proceedings in which the child is involved;
8. To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child;
9. To provide information to the court as to the need for the presence of other supportive persons or a facility animal at the court proceedings while the child testifies in order to promote the child's feelings of security and safety;

10. To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel, such as child protection services, victim advocates or prosecutorial staff who are trained to interview child victims;
11. With respect to child victims of violent or sex crimes or child abuse, to receive either directly or through the child's parent or guardian if appropriate, at the time of reporting the crime to law enforcement officials, a written statement of the rights of child victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

CHAPTER SIX DISTRICT COURT CHARGING STANDARDS

6.00 OFFENSES AND EVIDENTIARY STANDARDS

Offenses will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised. This standard supersedes Standard 2.00(b) and applies to both misdemeanor crimes against persons and property.

6.01 MULTIPLE CHARGES BASED UPON THE SAME FACT PATTERN

The District Courts have scheduled their readiness and trial calendars in such a way that Deputy Prosecuting Attorneys will typically have multiple trials confirm for a given trial term, and with as little as 2 working days' notice prior to trial. Given this schedule, it is impractical and often times logistically impossible for the Deputy Prosecuting Attorney to add charges for trial upon rejection of the State's offer and confirmation of trial. For these reasons, the District Court Unit is exempted from Standard 2.01.

For District Court cases, the charging Deputy Prosecuting Attorney should file at the outset all charges that the Deputy Prosecuting Attorney anticipates would be prosecuted were the case to proceed to trial.

The charging Deputy Prosecuting Attorney should make his or her best offer at the time of charging. This may include dismissal of the less serious count(s) in exchange for a plea to the more serious count(s). The State's plea offer should demand a plea to the number of counts and the degree of charges that will adequately and accurately reflect the nature of the defendant's criminal conduct for which there is sufficient admissible evidence. Generally, when there is sufficient admissible evidence to support multiple counts (whether charged or uncharged), the plea offer may allow for dismissal of one or more counts in exchange for a guilty plea to the remaining charged counts and an agreement to make restitution on all charged and uncharged counts for which there is sufficient admissible evidence to establish the defendant's culpability.

If the Deputy Prosecuting Attorney learns of additional evidence impacting the case after charges are filed, the Deputy Prosecuting Attorney may change the charges or change the State's offer in accordance with these Standards.

6.02 CITIZEN COMPLAINTS

- A. Citizens who desire to initiate criminal charges shall first be referred to the law enforcement agency in whose jurisdiction the alleged offense was committed.
- B. If the law enforcement agency in question has already been contacted and has indicated that it will not investigate or otherwise pursue the matter, the citizen shall be referred to the Victim/Witness Unit for the completion of a factual statement. The Victim/Witness Unit shall ascertain why the law enforcement agency in question declined to take action and shall refer that information and the citizen's factual statement to the District Court Unit.
- C. If the assigned Deputy Prosecutor concludes that there is a sufficient basis for the filing of a charge under Standard 2.00, the matter shall be charged directly by the Deputy Prosecutor and prosecuted like any other matter in accordance with these Standards.
- D. If the citizen's factual statement does not provide a sufficient basis for the filing of a charge under Standard 2.00, the citizen shall be so advised in detail. If the citizen still insists upon the filing of a charge, the Deputy Prosecutor shall review the citizen complaint procedure with the citizen and (if requested) assist in the charge selection and the preparation of the citation or complaint. At trial, the Deputy Prosecutor shall simply endeavor to elicit the relevant facts for the trier of fact, and shall not argue an issue of fact or law in bad faith.

6.03 VIOLATIONS OF MUNICIPAL LAW

Offenses submitted to this office (whether by municipal police or private citizens) for a charging decision, but which could also be prosecuted under existing municipal laws, shall be referred to the appropriate city attorney for charging and prosecution.

6.04 DOMESTIC VIOLENCE CASES

When a domestic violence case is charged, the charge shall carry a Domestic Violence tag.

A representative of the District Court Unit of the Snohomish County Prosecuting Attorney's Office shall attempt to contact each victim before charging a domestic assault case, either directly or through the Victim/Witness Unit. Each victim contacted shall be given an opportunity to express his/her opinion on whether charges should be filed. The decision whether to charge and prosecute is that of the Deputy Prosecutor, and will be made in accord with these charging and disposition standards. The Deputy Prosecutor will consider the victim's preference, along with the other specific factors listed below, in making the charging decision.

- A. The extent of the victim's injury as a result of the incident;
- B. The likelihood that similar incidents will occur in the future;
- C. Whether others (e.g. children) in the household may be at risk as a result of the incident for which charges are being considered;
- D. The impact upon public safety;
- E. The victim's preference as to whether charges should be filed;
- F. The availability of the victim to testify in court; and
- G. Whether the case can be proven without the victim's cooperation.

Care should be taken to insure that any request by the victim to not file charges is freely made and is not the product of threats or pressure by the accused.

CHAPTER SEVEN DISTRICT COURT DISPOSITION STANDARDS

7.00 INTRODUCTION

These standards are intended to guide the disposition of cases in District Court. Our district courts have jurisdiction over misdemeanor and gross misdemeanor cases. District Court judges have broad discretion to sentence offenders up to the statutory maximum for the crime charged because these cases are not governed by the Sentencing Reform Act. Typically, a judge can sentence an offender up to 90 days for a misdemeanor and 364 days for a gross misdemeanor. Some offenses have mandatory minimum sentences that must be adhered to. These standards set forth default sentencing recommendations for the most frequently litigated misdemeanor and gross misdemeanor cases. They have been established to try to promote consistent sentencing practices.

As in Superior Court, judges have a number of sentencing options they may consider in District Court cases. They include total or partial confinement; imposition of community restitution hours; imposition of probation and crime-related conditions of probation; and payment of costs, fines, assessments as well as restitution payments to victims for easily ascertainable loss or damages. Additionally, the court often has the option of deferring or suspending some jail time and/or a fine on condition the offender complies with the other terms of the sentence. See Section 8.02 for guidelines relating to these forms of probationary sentences. Furthermore, other alternative resolutions may be available, such as a deferred prosecution; the “compromise” of a misdemeanor; or Mental Health Court. Each of these options is discussed in more detail below.

7.01 DEFERRED PROSECUTION

RCW 10.05 establishes the deferred prosecution program.

- A. It should be made available only to defendants:
 - 1. who are in fact guilty;
 - 2. whose criminal conduct is caused by alcohol, drug, or mental problems;
 - 3. whose probability of re-offending is great if not treated;
 - 4. who are serious about receiving treatment and are accepted into a program; or
 - 5. whose conduct does not demonstrate a manifest danger to other persons.

A defendant is only eligible for one deferred prosecution.

B. Guidelines for Concurrence

1. The Deputy Prosecutor shall oppose the petition if it is presented to the court after one of the following motions has been argued:
 - a. motion to dismiss the charge(s);
 - b. motion to suppress evidence; or
 - c. motion to produce particularly burdensome discovery;
2. The petition should be presented seven days before the trial date as required by statute. The Deputy Prosecutor shall object to a petition presented on the day of trial, especially if any witnesses or jurors are needlessly present.
3. The petition must have prior approval from the Probation Department of the District Court Division where it is presented.
4. The petition must be in writing and signed by the defendant personally under oath.
5. The petition shall either:
 - a. contain a proposed treatment program prepared by a State certified or approved agency; or
 - b. indicate the approved agency or agencies that the defendant intends to contact.
6. The petition must allege that:
 - a. the conduct charged resulted from an alcohol, drug, or mental problem;
 - b. the problem requires treatment; and
 - c. there is a high probability that the conduct will recur without treatment.

Facts and reasons must be supplied to support these claims.

7. The petition must stipulate to the admissibility of the police incident reports in case the deferred prosecution is revoked.
8. The petition must waive the defendant's right to a speedy trial and acknowledge all of the rights to which he/she is entitled.
9. The petition must state that
 - a. the defendant agrees to pay the cost of diagnosis and treatment; or
 - b. the defendant is unable to pay such costs.
10. The order on deferred prosecution entered must be the order provided by the Court.

11. The defendant agrees to not drive without a valid license, insurance, and ignition interlock (as ordered by DOL).
12. Exclusions. Absent good cause, the Deputy Prosecutor will not concur where any of the following are present:
 - a. The defendant has previously participated in a deferred prosecution program. (Note: If the prior deferred prosecution was pursuant to 10.05, the defendant is statutorily ineligible for another deferred.)
 - b. The conduct involved behavior manifestly dangerous to other persons. The Deputy Prosecutor should consult with the arresting officers and the victims/witnesses to ascertain the seriousness of the conduct. Normally, a defendant charged with Assault, Reckless Driving, or Hit and Run (attended) should not be allowed to obtain a deferred prosecution.
 - c. The charged crime addresses behavior which was not caused by alcohol, drug or mental problems (such as most instances of DWLS). In such cases the accused shall plead guilty or stipulate to such non-related charges before the Deputy Prosecutor concurs in the deferred prosecution of any otherwise appropriate charges(s).
 - d. The conduct involved damage to property and the defendant has not made restitution.

C. Exceptions

Exceptions to these policies may be made for good cause. Examples of good cause include:

1. the defendant has such a substantial prior record, including jail time, that there is no reasonable expectation that further court proceedings would deter future offenses; and
2. the victim supports the defendant's request for deferred prosecution.

D. Approved Treatment Agencies

The Deputy Prosecutor will not approve a deferred prosecution petition unless the treatment agency contacted (or to be contacted) by the defendant is an approved agency pursuant to RCW 70.96A or 71.24.

E. Objections

Whenever a Deputy Prosecutor objects to the granting of a deferred prosecution petition, the reason(s) therefore shall be fully stated on the court record and noted in the prosecution file.

7.02 MENTAL HEALTH COURT

The Snohomish County Prosecutor's Office participates in the County's Mental Health Court, which is a collaborative, problem-solving court designed to promote public safety and reduce recidivism by mentally ill offenders through an intensive program of evaluation, treatment, and frequent monitoring of compliance. Its goal is to bring long-term stability and safety to mentally ill offenders while ensuring the security and well-being of the community.

A. Statutory Minimum Requirements for Eligibility, RCW 2.28.180

1. The offender would benefit from psychiatric treatment or treatment related to his or her developmental disability or traumatic brain injury;
2. The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and
3. Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:
 - a. That is a sex offense;
 - b. That is a serious violent offense;
 - c. During which the defendant used a firearm; or
 - d. During which the defendant caused substantial or great bodily harm or death to another person.

B. Additional Requirements for Eligibility

As stated in RCW 2.28, no case shall be removed from the regular course of prosecution to be included in MHC without the consent of the Prosecutor's Office. In determining eligibility, the prosecutor will consider any mental health assessment, drug assessment, and/or risk assessment provided to the prosecutor's office for that case. The following are guidelines that the Prosecutor's Office will follow to determine eligibility for MHC. The Prosecutor's Office reserves the right to make exceptions to these guidelines in extraordinary circumstances and in addition, to consider other relevant factors in determining eligibility.

1. The offender must meet the statutory requirements of RCW 2.28.180.
2. The offender is diagnosed with a DSM-IV Axis I mental health diagnosis other than alcohol/drug addiction.
3. The DSM-IV Axis I mental health diagnosis is the primary diagnosis.
4. The Axis I diagnosis has some correlation with the crime charged.
5. The offender must be eligible for publicly-funded mental health treatment or have demonstrated the ability to pay for private treatment, and be willing to comply with recommended treatment.
6. The offender may have a co-occurring alcohol or drug abuse/addiction, but the referred offense or ongoing pattern of criminal activity must indicate that the mental health diagnosis is a substantial component in the criminal behavior and that the criminal behavior is not merely indicative of drug/alcohol-seeking behavior or drug/alcohol-induced behavior.
 - a. The mental health and drug/alcohol assessment must prognosticate that the offender can stop the drug/alcohol abuse/addiction and successfully manage the mental health problems within the MHC contract period. Additionally, there must be adequate treatment resources available to address all of the above treatment needs.
 - b. The offender must agree to stop using alcohol, marijuana, and controlled substances.
 - i. The offender must be willing to participate in random UAs and achieve consistent negative UA results.
 - ii. The offender must be eligible for publicly-funded alcohol/drug treatment or have demonstrated the ability to pay for private treatment, and be willing to comply with recommended treatment.
 - b. The offender may be required to begin an alcohol/drug treatment regimen and show success before entering into the MHC program, and will be required to successfully complete alcohol/drug treatment thereafter.
7. The offender must be able to appreciate the consequences of the legal proceedings and the agreement s/he is making with the court.

If the offender is not deemed competent, s/he may be reassessed after a term of competency restoration at Western State Hospital.

8. The individual cannot present a safety risk to the MHC team or any MHC participant. For example, individuals who are respondents in any court orders prohibiting contact with any member/participant of MHC shall be excluded. Also, individuals who are prone to assaultive behavior regardless of compliance with prescribed medication shall be excluded.
9. The current offense for which the individual is referred to MHC cannot be any of the following:
 - a. DUI, Physical Control, or Minor DUI;
 - b. Assault, when the victim objects to MHC;
 - c. DV case, when the victim objects to MHC;
 - d. Assault or other criminal behavior that endangers a person, indicating the offender is exercising inappropriate power and control over another (rather than an assault that is directly related to the offender's untreated mental illness);
 - e. A crime involving a vulnerable victim, such as a child or developmentally delayed person, when the offender had the capacity to appreciate the vulnerable status of the victim;
 - f. A crime involving sexually deviant behavior; or
 - g. A felony crime, unless the assigned DPA and his/her supervisor determine, in accord with the PA Office's charging and disposition standards, that a misdemeanor disposition is appropriate.
10. The prior criminal history and other pending criminal charges cannot include any of the following:
 - a. A pattern of assault or other criminal behavior that endangers persons, indicating the offender is exercising inappropriate power and control over one or more persons (rather than assaults that are directly related to the offender's untreated mental illness);
 - b. A crime involving a vulnerable victim, such as a child or developmentally delayed person, when the offender had the capacity to appreciate the vulnerable status of the victim;
 - c. A crime involving sexually deviant behavior;
 - d. A violent or serious violent crime as defined in RCW 9.94A.030; or
 - e. An assault involving substantial or greater pain.

7.03 COMPROMISE OF MISDEMEANORS

The Deputy Prosecutor may concur in the compromise of a charge only in accordance with the exact requirements of RCW 10.22.010 and 020. Note that a compromise of a misdemeanor is prohibited by RCW 10.22.010 when committed under the following circumstances:

- A. By or upon an officer while in the execution of the duties of his/her office;
- B. Riotously;
- C. With an intent to commit a felony; or
- D. By one family or household member against another as defined in RCW 10.99.020 and was a crime of domestic violence as defined in RCW 10.99.020.

The Deputy Prosecutor should not concur in the compromise of misdemeanor where compensation for the victim's damages came from a third party, such as an insurance company. The Deputy Prosecutor may ask the court to require the defendant to reimburse the court for costs incurred prior to dismissing the case.

7.04 AGREEING NOT TO FILE RELATED CHARGES

Agreeing not to file additional charges in exchange for a plea of guilty is frequently made part of a plea agreement. When an agreement is made, the specific charge and police department case number of the charge or charges the Deputy Prosecutor agreed not to charge shall be written into the statement on plea of guilty. A generic statement, such as, "The State will not pursue additional charges related to this incident," shall never be used. A generic statement of this nature could be used by the defense to preclude filing more serious charges that were unknown by the prosecution when the plea agreement was made.

7.05 FINES AND COSTS

Upon the agreement of a defendant to plead guilty, the Deputy Prosecutor may recommend that the costs and penalties associated with the proceeding be included in the total fine that is imposed. When the court has discretion over allocation of the financial penalties, the Deputy Prosecutor shall ask the court to allocate those penalties to funds that reimburse the county for costs.

7.06 RESTITUTION

When the police referral contains sufficient information to determine that there is a victim who has suffered easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for personal injury, and/or lost wages resulting from injury, and the damages amount to over \$100, the Deputy Prosecutor shall include restitution as part of the sentence recommendation. If the loss is under \$100, the Prosecutor's Office does not have sufficient resources to research, document and process these claims, although the victim may independently request the court to impose restitution as part of the sentence.

7.07 DRIVING WHILE LICENSE SUSPENDED/REVOKED (RCW 46.20.342)

A. Cases solely involving criminal charges of No Valid Operator License and Driving While License Suspended in the Third Degree shall not be referred to the Snohomish County Prosecutor's Office, and will not be filed by the Prosecutor's office UNLESS:

1. The defendant has ten (10) or more prior DWLS type criminal convictions or infractions; or
2. The defendant has a prior conviction for vehicular homicide, vehicular assault, attempting to elude a pursuing police vehicle, or hit and run death; or
3. The defendant is abusive towards law enforcement or demonstrates a blatant disrespect or disregard for the laws of the State of Washington and/or those who enforce the laws of the State of Washington.

Officers referring charges solely for Driving While License Suspended in the Third Degree or No Valid Operator License must complete the DWLS Checklist and include it with their referral.

B. Criminal charges of No Valid Operator License and Driving While License Suspended in the Third Degree referred with other charges may be filed by the Prosecutor's Office. Consideration will be given for the three factors above, the nature of the other charge(s) filed, and a determination of whether a representative from DOL will be needed to testify regarding the other charge(s).

C. Dispositions

1. If the defendant has less than ten (10) prior convictions for DWLS type offenses, and does not have a prior listed in 7.07(A)(2) or a concern listed in 7.07(A)(3), then offer to amend to a NVOL infraction with a \$250 fine.
2. If the defendant has ten (10) or more prior convictions for DWLS type offenses, has a prior listed in 7.07(A)(2), or a concern listed in 7.07(A)(3), then:
 - a. 1st – 5th conviction: 0 days in jail and \$250 fine. No probation.
 - b. 6th – 10th conviction: 5 days in jail and \$250 fine. No probation.
 - c. 11th – 15th conviction: 10 days in jail and \$300 fine. No probation.
 - d. 16th – 20th conviction: 20 days in jail and \$300 fine. No probation.
 - e. 21st – 25th conviction: 30 days in jail and \$300 fine. No probation.

7.08 DEPARTMENT OF FISH AND WILDLIFE CASES

A. Filing as an Infraction

1. The legislature has decriminalized a variety of DFW cases, and the Court has eliminated the option of Bail Forfeitures. Given this trend, when there is an option between referring a criminal charge and filing an available infraction for these offenses, the default for these cases will be filing the infraction and not referring a criminal charge.
2. If a criminal referral is made, the Prosecutor's Office will review the referral, and should it be determined that a related infraction is an option, the case will be declined back to DFW for DFW to file an infraction.
 - a. In those rare cases where the defendant has had repeated and numerous violations of the same crime/infraction, the Deputy Prosecuting Attorney may review for filing a criminal charge into District Court.
 - c. This does not include those criminal charges listed in 7.07(B)

B. Filing as a Criminal Charge

1. Charges for the following specific offenses will be reviewed for filing criminal charges pursuant to the overall guidelines:
 - a. Animal Cruelty 2
 - b. Unlawful Hunting Big Game 2
 - c. Unlawful Hunting of Wild Birds 1
 - d. Taking Endangered Fish/Wildlife 1
 - e. Taking Protected Fish/Wildlife
 - f. Recreational Fishing 1
2. Referrals from DFW for which there is no related infraction will be reviewed for filing a criminal charge pursuant to the overall guidelines.

C. Dispositions

1. Dispositions for the offenses listed in 7.08(B)(1) are as follows:
 - a. First offense: 0 – 10 days in jail, \$300 fine, and 2 years of probation with the rest of the jail/fine suspended.
 - b. Second offense: 5 – 30 days in jail, \$500 fine, and 2 years of probation with the rest of the jail/fine suspended.
 - c. Third offense: 30 – 80 days in jail, \$500 fine, and 2 years of probation with the rest of the jail/fine suspended.
2. Charges filed pursuant to 7.08(B)(2)
 - a. May be resolved by filing a citation for a DFW infraction, if appropriate to do so based on the defendant's criminal history; otherwise
 - b. If the Defendant has less than five (5) prior convictions for similar charges, then the recommendation should be 0 days in jail, \$500 fine, and no probation
 - c. If the Defendant has five (5) or more prior convictions in the last five (5) years for similar charges, then the recommendation should be 0 – 10 days in jail, \$500 fine, and 2 years of probation.

7.09 MISDEMEANOR POSSESSION OF MARIJUANA

In general, we will no longer prosecute misdemeanor Possession of Marijuana when the offender is 18 years old or older. We ask that law enforcement agencies refrain from sending us adult misdemeanor Possession of Marijuana referrals when that is the only crime committed.

While possession of marijuana remains illegal under federal law, as of December 6, 2012, it no longer is illegal under state law for persons aged 21 or older to possess 1 ounce (28.3 grams) or less of marijuana, 16 ounces or less of marijuana-infused product in solid form, or 72 ounces or less of marijuana-infused product in liquid form. As of December 6, 2012, it also is no longer illegal under state law for persons to possess devices used to smoke marijuana. For marijuana possessory crimes committed on or after December 6, 2012, the definition of marijuana has changed, such that to prove a possessory crime we must obtain crime laboratory analysis of the substance to show that the substance has a THC concentration greater than 0.3 percent on a dry weight basis, and we must have that analyst available to testify about the result.

7.10 UNLAWFUL TRANSIT CONDUCT

In general, we will no longer prosecute the crime of Unlawful Transit Conduct, when the offender committed no other crimes. Examples of Unlawful Transit Conduct referrals that should be sent to us include referrals involving assault, reckless endangerment, malicious mischief, or disorderly conduct (obstructing traffic). We ask that law enforcement agencies refrain from sending us Unlawful Transit Conduct referrals when there are no other chargeable crimes. In those situations, there may be an applicable infraction to cite instead. Some possible infractions that may apply include:

1. Littering less than or equal to 1 cubic foot, RCW 70.93.060(2)(a) (class 3)
2. Smoking in a public place, RCW 70.160.030
3. Urinating in public, SCC 10.04.120 (class 3)
4. Consuming liquor in public, RCW 66.44.100 (class 3)

Also, the transit authority may wish to issue an exclusion notice to the offender, which could be used as a basis for a Criminal Trespass charge, if the offender returns to the transit station or property.

7.11 VEHICLE LICENSING AND REGISTRATION OFFENSES

In general, we will no longer prosecute the crimes of Failure to Transfer Vehicle Title (RCW 46.12.650(7)), Driving with Cancelled License Plates and Driving an Unregistered Vehicle (RCW 46.12.160), when the offender committed no other crimes. We ask that law enforcement agencies refrain from sending us referrals on these, unless the offender committed other crimes. If no other crime was committed, there may be an applicable infraction to cite instead, such as:

1. Certificate of title required, RCW 46.12.520(1)
2. Registration and plates required, RCW 46.16A.030 (\$529)
3. Registration certificate, RCW 46.16A.180.

7.12 LITTERING

In general, we will no longer prosecute Littering (RCW 70.93.060) as a crime, unless there are egregious circumstances. Egregious circumstances may involve littering unusually large quantities, repetitive littering, or littering items or substances that endanger public safety. We ask that law enforcement agencies refrain from sending us referrals for the crime of Littering when there are no egregious circumstances. There are some littering infractions that could be cited instead, such as:

1. Littering in a County Park, SCC 22.16.180
2. Littering less than or equal to 1 cubic foot, RCW 70.93.060(2)(a) (class 3).

7.13 THIRD DEGREE THEFT

In general, we will no longer prosecute adult offenders for Third Degree Theft when the pre-tax loss is less than \$25.00, the offender committed no other crimes, and the offender has no theft-related charges in the past two years. We do want law enforcement agencies to refer Third Degree Theft cases, regardless of the dollar amount of the loss, so that we can consider all the circumstances of the incident to determine if we should make an exception to this general guideline.

7.14 DOMESTIC VIOLENCE OFFENSES

The domestic violence tag shall not be removed from a domestic violence charge to obtain a guilty plea to the underlying offense, unless the original charging decision assigning a family or household relationship was in error, or there is insufficient evidence available at trial to establish the family or household relationship. Removal of the DV tag from the charge requires pre-approval from the lead District Court DPA.

CHAPTER EIGHT

DISTRICT COURT SENTENCING RECOMMENDATION STANDARDS

8.00 MAXIMUM SENTENCES

The District Court sentencing authority is set forth in RCW 3.66.067-.069, as modified by Avonitis v. Seattle District Court, 97 Wn.2d 131, 641 P.2d 169 (1982). See Section II(B)(2), *infra*.

- A. Gross Misdemeanors carry a maximum sentence of 364 days in jail and a \$5,000 fine. RCW 9A.20.020.
- B. Misdemeanors carry a maximum sentence of 90 days and \$1,000 fine. RCW 9A.20.020. However, in some cases, the maximum penalties may be lower.

8.01 RECOMMENDATIONS FOR CONCURRENT AND CONSECUTIVE SENTENCES

Whenever a person is convicted of two or more offenses that arise from a single act or omission, the Deputy Prosecutor shall recommend concurrent sentences. In all other circumstances, the Deputy Prosecutor should recommend that consecutive sentences (or separate sanctions) be imposed.

8.02 GUIDELINES FOR RECOMMENDING PROBATIONARY SENTENCES

There are two types of probationary sentences: deferred (RCW 9.95.210 and 3.66.067-.069), and suspended (RCW 9.95.210, 9.92.060, 3.66.067-.069). In a deferred sentence, the court (having entered a finding of guilty on the facts) defers the imposition of sentence for up to two years on certain conditions, including jail time, fines, participation in counseling/treatment programs, or other conditions. At the end of the period of deferral, if the defendant has complied with the conditions of his/her probation, the finding of guilty is removed and the case is dismissed. In a suspended sentence, the court imposes the maximum jail sentence it desires or is allowed to enter and suspends that sentence on conditions much the same as a deferred. There is an important difference, however: with a suspended sentence, unlike a deferred sentence, the court has entered the conviction and it will not be stricken at the end of the period of suspension. See RCW 3.66.068. However, for some misdemeanor convictions, this difference is lessened by the effect of RCW 9.96.060, which allows for vacation of the record of conviction after three to five years, if the defendant has completed all terms of the sentence, has remained crime-free, and has never had another conviction vacated.

A. Deferred and Suspended Sentences

1. The court may revoke a deferred or suspended sentence at any time prior to entry of an order dismissing the case, the expiration of the maximum term, or entry of an order terminating probation. In re Jaime v. Rhay, 59 Wn.2d 58, 365 P.2d 722 (1961); In re Myers, 20 Wn. App. 200, 579 P.2d 1006 (1978); RCW 3.66.069.
2. The court may place a defendant on probation for up to five years on DUIs and Domestic Violence offenses. All other gross misdemeanors and misdemeanors carry a probationary term up to two years.
3. After successfully completing a period of deferral, the defendant is entitled to withdraw his/her plea or the finding of guilty, enter a plea of not guilty, and have the case dismissed. RCW 3.66.067.
4. A dismissal after successful completion of a deferred sentence in a traffic case neither removes the conviction from the defendant's driver's record, nor does it remove the conviction from the defendant's police/prosecution record. These facts should be made clear to the defendant. It does allow a defendant to have the court finding changed to not guilty, and the defendant truthfully can omit it from employment applications that ask for conviction history.
5. A deferred sentence is to be distinguished from a deferred finding, which is never appropriate. See 8.02.
6. The Deputy Prosecutor should help ensure that some method is available to enforce the conditions of a deferred sentence.
 - a. Supervised probation for a specific period of time is the preferred method, if the services of a probation officer are available.
 - b. Alcohol, Drug, and mental health treatment programs will sometimes agree to supervise a defendant's probation, or at least guarantee that the defendant complies with court orders. Again, a specific time period must be set.
 - c. Occasionally, the defendant's attorney will agree to see that the defendant complies with the court's orders within a specific time.
 - d. A scheduled review hearing prior to the expiration of probation may be sufficient by itself to ensure compliance. The defendant should be able to avoid appearing by providing proof of compliance. This approach is preferable for minor offenses involving simple conditions.

7. Conditions of a suspended sentence must be enforced by the same methods used to enforce conditions of a deferred sentence: supervised probation, review hearings, etc.
8. The Deputy Prosecutor should avoid recommending a suspended sentence when the crime is minor and is adequately addressed with a flat fine or jail time without probation. If the defendant has a prior record, the sentence should be imposed or suspended, rather than deferred.
9. The Deputy Prosecutor shall not recommend a deferred sentence for a Domestic Violence offense, or on any charge reduced from DUI/Physical Control.
10. Generally, the Deputy Prosecutor should not recommend a deferred sentence. If, however, exceptional circumstances exist such that a deferred sentence becomes appropriate in a given case, a Deputy Prosecutor may agree to recommend a deferred sentence after receiving prior approval from the Lead of the District Court Unit.

B. Deferred Findings

The Deputy Prosecutor shall always oppose deferral of a finding in traffic or criminal cases. A deferred finding occurs when a judge declines to enter a ruling on guilt or innocence. A briefly delayed decision, to allow the judge time to consider the evidence or a legal argument, is not a deferred finding and may be appropriate. However, courts are sometimes asked to defer a finding for the purpose of avoiding a decision altogether, reducing or dismissing the case later, or protecting the defendant's driving record. The court lacks authority to enter a deferred finding for any of these purposes. Briefing is available for DPAs on this issue.

8.03 GUIDELINES FOR SPECIFIC RECOMMENDATIONS

These guidelines cover the recommendations to be made for the most common offenses encountered in District Court. Offenses not specifically covered herein shall be treated in accordance with the most analogous kinds of offenses that are covered. Questions in this regard should be directed to the Lead District Court Deputy.

The Deputy Prosecutor may deviate from these guidelines provided the reasoning therefore is explainable to the court and noted in the prosecution file for later supervisor review. (Note: This standard supersedes Standard 1.02; it is not practical to obtain prior supervisory approval for every reduction made outside these standards.) However, these Standards cannot be substantially disregarded without good reason. See Standard 1.01.

Note that the “first offense” section assumes no prior offenses of any kind, and the existence of a prior or priors should affect this Office’s sentencing recommendation. A DUI conviction on top of one or more other major traffic offenses would still qualify as a “first offense,” but the recommended fine or jail time should be increased. As a general rule, traffic and criminal offenses should be separated for purposes of making a recommendation: a DUI defendant with a prior for shoplifting is a first offender; an Assault 4 defendant with a Negligent Driving 1 conviction is a first offender. When known, the court should be made aware of the complete record of any defendant at sentencing, whether or not it impacts this office’s recommendation. Also, the separation between traffic and criminal offenses is not hard and fast; a defendant who fails to provide lawfully required information to a police officer should be sentenced more severely for a subsequent hit and run, since the gravamen of the offense is similar.

“SCC” refers to Snohomish County Corrections. Occasionally, a defendant may request to be allowed to serve time in another county or city jail; this is usually a satisfactory alternative. If a defendant chooses to serve his/her sentence in a facility other than SCC, he/she should be informed that he/she will have to pay the cost of incarceration in that facility. Defense requests to use an electronically-monitored home confinement program other than the one operated by SCC should be opposed. In the past, District Court EHM sentences monitored by other entities have been falsely certified as completed when they were in fact incomplete.

“CFA” refers to “costs, fees and assessments”. Note that some District Court judges will add CFA to a base fine, while others will subtract CFA from a gross fine. DPAs must know the practice of the judge before whom they will appear and tailor the CFA recommendation accordingly.

“IID” stands for “ignition interlock device”.

A. Driving Under The Influence (GM, 46.61.502)

ELEMENTS:

1. Driving a motor vehicle in Snohomish County, Washington;
2. While under the influence of or affected by the use of alcohol and/or drugs; or
3. While the person has, within two hours after driving, an alcohol concentration of .08 or higher as shown by analysis of breath or blood; or
4. While the person has, within two hours after driving, a THC concentration of 5.0 or higher as shown by analysis of blood.

STATUTORY AGGRAVATORS (PLEAD AND PROVE):

1. Refusal
2. BAC of .15 or over
3. Child under the age of 16 in vehicle

REQUIRED DOCUMENTS:

1. Officer's report, including DUI packet, BAC printout or blood test results with supporting documentation from toxicology lab, and witness statements.
2. Driving record which is no more than one working day old.

MAXIMUM PENALTY:

364 days in jail and \$5,000 fine plus costs and assessments. The court has jurisdiction for 5 years if less than 364 days in jail is imposed.

NOTE: If defendant is also DWLS 1 from the same event, there is a minimum statutory penalty of 90 days in jail for the DWLS 1. If any of the above statutory aggravators are present, there are enhanced minimum penalties. See sentencing grid for enhanced penalties.

MINIMUM PENALTIES: See sentencing grid (Appendix D).

STANDARD SENTENCING RECOMMENDATION:

The minimum mandatory sentence will be recommended, as set out in the sentencing grid, unless there are aggravating factors (see below). If there are aggravating factors, the recommendation will be increased, depending on the number and severity of the factors.

CONDITIONS OF PROBATION:

These conditions should be requested on any case which originated as either a DUI or Physical control.

1. RCW 46.61.5152(8)(a)
 - a. No driving a motor vehicle without license and insurance.*
 - b. No driving with a BAC of .08 or THC of 5.0 or over within 2 hours of driving.*
 - c. No refusing a BAC or blood draw.*
 - d. Alcohol or drug treatment.
 - e. Supervised probation.
2. Alcohol and drug evaluation and follow-up treatment as recommended.
3. RCW 46.61.5152 - DUI Victim's Panel.
4. RCW 46.61.5054- \$200 BAC fee, unless indigent.*
5. No major moving violations.
6. No alcohol related charges or convictions.
7. Restitution, if any.
8. RCW 38.52.430- Reimbursement for emergency response, if requested, documented, and incident involves more than typical DUI.
9. Ignition Interlock Device as required by DOL.
10. DUI Cost Recovery (\$125 minimum) to Law Enforcement Agency. (this goes directly to the LEA and is separate from the BAC fee)
11. No criminal law violations.

*Mandatory

AGGRAVATING FACTORS:

1. Whether the defendant was responsible for injury to another person or another's property; and/or
2. Whether there were any passengers (particularly a child).
3. BAC greater than .20.
4. Accident.
5. Abusive or very uncooperative defendant.

6. Multiple prior traffic convictions which do not count as priors for DUI, including DUI, Vehicular Homicide, and Vehicular Assault convictions older than 7 years.
7. There is evidence of the defendant being under the influence of alcohol and drugs.
8. Officer's opinion of intoxication level is "extreme."
9. Prior convictions for offenses involving drugs or alcohol.
10. Presence of drugs or alcohol in the vehicle.

MITIGATING FACTORS:

1. BAC less than .08.
2. Officer's opinion of intoxication level is "slight" or "obvious."
3. Very cooperative attitude.

FACTORS FOR REDUCING CHARGE:

Consider these factors in deciding whether to reduce a DUI to either Reckless Driving or Negligent Driving.

1. Lack of poor driving.
2. Good FSTs.
3. No accident.
4. Lack of admissions.
5. Interim drinking or drug use.
6. Difficulty proving the defendant was driving or satisfying corpus delicti.
7. Lack of prior criminal history.
8. Susceptibility of evidence to suppression motions.

CHOOSING THE CORRECT CHARGE FOR REDUCTIONS:

If the totality of the evidence and the defendant's driving history indicate that the charge is appropriate for reduction, the following general standards apply to alcohol-only DUI cases:

1. .100 or under may be reduced to a Negligent Driving First Degree.
2. .101 to .119 may be reduced to Reckless Driving.
3. under .180 may be reduced to "affected by" rather than "over .15".

REDUCTIONS OF DUI REFUSAL AND NO-TEST:

If the totality of the evidence and the defendant's driving history indicate that the charge is appropriate for reduction, charges of DUI refusal and no-test may be reduced upon consideration of the mitigating factors listed

above. Additional factors to be considered when reducing DUI refusal and no-test cases include:

1. PBT result
2. Whether refusal is indicative of consciousness of guilt

REDUCTIONS OUTSIDE OF DISPOSITION STANDARDS:

Reductions outside of these disposition standards may be made in cases where warranted by legal and evidentiary issues. These exceptions should be rarely made, based on the totality of the evidence, and well documented within the case file.

MARIJUANA-ONLY DUI:

For cases where the defendant is alleged to be impaired only by marijuana, charges for DUI should only be filed where evidence that the defendant is affected by the use of marijuana is of sufficient strength that a reasonable fact finder would find probable cause to perform the blood draw. The Deputy Prosecuting Attorney should not charge marijuana-only DUIs based solely on the blood draw results; the totality of the evidence must be considered.

B. Physical Control (GM, RCW 46.61.504)

ELEMENTS:

1. Being in actual physical control of a motor vehicle in Snohomish County, Washington; and
2. While under the influence of or affected by the use of alcohol and/or drugs; or
3. While the person has, within two hours after being in physical control, an alcohol concentration of .08 or higher as shown by analysis of breath or blood; or
4. While the person has, within two hours after being in physical control, a THC concentration of 5.0 or higher as shown by analysis of blood.

STATUTORY AGGRAVATORS (PLEAD AND PROVE):

1. Refusal
2. BAC of .15 or over
3. Child under the age of 16 in vehicle

REQUIRED DOCUMENTS:

1. Officer's report, including DUI packet, BAC printout or blood test results with supporting documentation from the toxicology lab, and witness statements.
2. Driving record which is no more than one working day old.

MAXIMUM PENALTY:

364 days in jail and \$5,000 fine plus costs and assessments. The court has jurisdiction for 5 years if less than 364 days in jail are imposed.

MINIMUM PENALTIES: See sentencing grid (Appendix D).

STANDARD SENTENCING RECOMMENDATION: Same as DUI.

FACTORS FOR REDUCING CHARGE:

In addition to reasons listed under DUI, consider whether the defendant has an argument that he/she was parked safely off the roadway.

C. Minor Driving After Consumption (Misd., RCW 46.61.503)

ELEMENTS:

1. Driving or being in physical control of a motor vehicle in Snohomish County, Washington; and
2. Defendant under age 21; and
3. BAC between .02 and .08 as shown by a breath or blood test; or
4. THC concentration between .00 and 5.00 as shown by a blood test.

If there is sufficient evidence to prove that a defendant, while a minor, has committed a DUI or Physical Control, the defendant should be charged with DUI or Physical Control, rather than Minor Driving After Consumption.

REQUIRED DOCUMENTS

1. Officer's report, including DUI packet, BAC printout or blood test results (including blood test evidence from the toxicology lab), and witness statements.
2. Driving record which is no more than one working day old.
3. CCID for defendant.

MAXIMUM PENALTY: 90 Days and \$1,000 fine

MINIMUM PENALTY: None

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days in jail with 89 or 90 days suspended, \$200 fine with \$800 suspended; CFA.

Second Offense: 90 days in jail with 80 to 89 days suspended; \$300 fine with \$700 suspended; CFA.

Third Offense: 90 days in jail with 60 days suspended; \$300 fine with \$700 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations.
2. No major traffic infractions.
3. No driving without license and insurance.
4. No refusal of the BAC.
5. Alcohol/Drug evaluation and follow up.
6. DUI victim's panel.
7. No alcohol violations.
8. 2 years of probation.

D. Negligent Driving First Degree (Misd, RCW 46.61.5249)

ELEMENTS:

1. Driving a motor vehicle in Snohomish County, Washington,
2. in a negligent manner that endangers or is likely to endanger any person or property, where he/she
3. exhibits the effects of having consumed liquor, marijuana, any drug, or any inhaled/ingested substance; which can include odor on breath, altered speech, manner, appearance, behavior, lack of coordination, or other indications that he/she has consumed liquor, marijuana, any drug, or any inhaled substance and either:
 - a. is in possession of or in close proximity to a container that has recently had liquor/marijuana/drug/inhaled or ingested substance in it; or
 - b. shows by other evidence to have recently consumed liquor/marijuana/any drug/inhaled or ingested substance.

REQUIRED DOCUMENTS:

1. Officer's report, including DUI packet and BAC printout or blood test results, if any, and witness statements.
2. Driving record which is no more than one working day old if the charge is a reduction from DUI or Physical Control.

MAXIMUM PENALTY: 90 Days and \$1,000 fine.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days in jail with 89 or 90 days suspended; \$200 fine with \$800 suspended; CFA.

Second Offense: 90 days in jail with 80 to 89 days suspended; \$300 fine with \$700 suspended; CFA.

Third Offense: 90 days in jail with 60 days suspended; \$300 fine with \$700 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations;
2. No major traffic infractions;
3. No driving without license and insurance;
4. No refusal of the BAC;
5. Alcohol/Drug evaluation and follow up;
6. DUI victim's panel;
7. IID per DOL; and
8. 2 years of probation

E. Negligent Driving Second Degree (Infraction, RCW 46.61.525)

ELEMENTS:

1. Driving a motor vehicle in Snohomish County, Washington,
2. in a negligent way that endangers or is likely to endanger any person or property.

MAXIMUM PENALTY: \$250 fine.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

\$250 plus any costs assessed by the court. Note: Negligent Driving in the Second Degree may be an appropriate reduction in criminal traffic cases that have major evidentiary problems.

F. Reckless Driving (GM, RCW 46.61.500)

ELEMENTS:

1. Driving a motor vehicle in Snohomish County, Washington,
2. with a willful or wanton disregard for the safety of persons or property.

MAXIMUM PENALTY: 364 Days and \$5,000 fine.

MINIMUM PENALTY: None, but mandatory 30 day license suspension begins upon a finding of guilt.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days with all but 0-5 suspended; \$300 fine with \$4,700 suspended; CFA.

Second Offense: 364 days with all but 0-10 suspended; \$500 fine with \$4,500 suspended; CFA.

Third Offense: 364 days with all but 10-30 suspended; \$500 with \$4,500 suspended; CFA.

Fourth Offense: 364 days with all but 30-90 suspended; \$1,000 with \$4,000 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations;
2. No major traffic infractions;
3. No driving without license and insurance;
4. Traffic Safety School level II; and
5. 2 years of probation.

AGGRAVATING FACTORS:

1. Speed over 100 mph.
2. Accident.
3. Prior driving record.
4. Bad weather.
5. Heavy traffic.
6. Residential area.
7. Pedestrians.
8. School zones.
9. Whether a child or children were present in the defendant's vehicle.

G. Hit And Run Attended (GM, RCW 46,52.020)

ELEMENTS:

1. The defendant was driving in Snohomish County, Washington;
2. The defendant was involved in an accident that resulted in damage to property or to another person's vehicle while that vehicle was being driven or attended;
3. The defendant knew he/she had been in an accident;
4. The defendant failed to stop at the scene or as close to the scene as possible, and
5. The defendant failed to provide information (name, license, insurance information and vehicle license number).

MAXIMUM PENALTY: 364 days and \$5,000 fine

MINIMUM PENALTY: None

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days in jail with all but 0-10 days suspended; \$400 fine with \$4,600 suspended; CFA.

Second Offense: 364 days in jail with all but 3-30 days suspended; \$500 fine with \$4,500 suspended; CFA.

Third Offense: 364 days in jail with all but 30-364 suspended; \$600 fine with \$4,400 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal law violations;
2. Restitution (if plea);
3. No major moving violations;
4. No driving without valid license and insurance; and
5. 2 years of probation.

Per State v. Hartwell, 38 Wn. App. 135, 684 P.2d 778 (1984) (overruled on other grounds), the court may not order restitution. A defendant may agree to pay restitution as part of a plea agreement.

AGGRAVATING FACTORS:

1. Injuries.
2. Reckless driving before or after the collision.
3. Alcohol.
4. Prior driving record.

5. Whether a child or children were in the defendant's vehicle.

MITIGATING FACTORS:

1. Partial compliance with statute.
2. Intimidation by "victim".

H. Hit And Run Unattended/Property Damage (M, RCW 46.52.010)

ELEMENTS:

1. The defendant was driving in Snohomish County, Washington;
2. The defendant's vehicle collided with another vehicle which was an unattended vehicle;
3. The defendant knew that he/she had been involved in an accident; and
4. The defendant failed to stop immediately and either locate the operator or owner of the vehicle struck and give him or her his/her name or leave his/her name and address in a conspicuous place in the vehicle struck.

MAXIMUM PENALTY: 90 days in jail and \$1,000.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days with all but 0-10 suspended; \$400 fine with \$600 suspended; CFA.

Second Offense: 90 days with all but 3-30 suspended; \$500 fine with \$500 suspended; CFA.

Third Offense: 90 days with all but 30-90 days suspended; \$600 fine with \$400 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal law violations;
2. Restitution (if plea);
3. No major moving violations;
4. No driving without valid license and insurance; and
5. 2 years of probation.

I. Driving Without Ignition Interlock (GM, RCW 46.20.740)

ELEMENTS:

1. The defendant was driving in Snohomish County, Washington;
2. The vehicle defendant operated was not equipped with an ignition interlock device; and
3. Notation on defendant's driver's record indicated this restriction.

REQUIRED DOCUMENTS: CCDR with notation that an IID is required. DOL custodian of records required for trial.

MAXIMUM PENALTY: 364 days in jail and \$5000.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days, with all but 0-10 suspended; \$200 fine with \$4800 suspended; CFA.

Second Offense: 364 days with all but 2-30 suspended; \$300 fine with \$4700 suspended; CFA.

Third Offense: 364 days with all but 30-90 suspended; \$400 fine with \$4600 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal law violations;
2. IID device per DOL;
3. No major moving violations;
4. No driving without valid license and insurance; and
5. 2 years of probation.

AGGRAVATING FACTORS:

1. Prior poor driving record.
2. Alcohol.

J. Driving While License Revoked 1st Degree (GM, RCW 46.20.342 (1)(a))

ELEMENTS:

1. Driving a motor vehicle in Snohomish County, Washington;
2. While driver's license was revoked as a Habitual Traffic Offender (RCW 46.65); and
3. Period of revocation was still in effect.

REQUIRED DOCUMENTS:

1. Police reports, PC notes, etc.
2. Certified copy of driving record (containing notice of revocation).
3. DOL custodian of records is required for trial.
4. If other than first offense, get certified copy of judgment and sentence from prior sentencing court(s) as needed for sentencing.

MAXIMUM PENALTY: 364 days and \$5,000 fine.

MINIMUM PENALTY:

First Offense - 10 days in jail.

Second Offense - 90 days in jail.

Third Offense - 180 days in jail.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days with all but 10 to 30 days suspended; \$200 fine with \$4800 suspended, inclusive of CFA.

Second Offense: 364 days with all but 90 to 180 days suspended; \$200 fine with \$4,800 suspended, inclusive of CFA.

Third Offense: 364 days with all but 180 days suspended; \$200 fine with \$4,800 suspended (inclusive of CFA).

Each additional DWLS 1: add 90 days in jail

CONDITIONS OF PROBATION:

1. No driving without valid license and insurance;
2. No criminal law violations;
3. 2 years of probation.

NOTE: If defendant is also DUI from the same event, there is a minimum statutory penalty of 90 days in jail for the DWLS 1. If defendant is DUI and

DWLS 1, the recommendations for the DWLS 1 are below, with the same probation conditions listed above:

First Offense: 364/274days suspended; no additional fine for the DWLS 1.

Second Offense: 364/ all but 120 to 180 days suspended (depending on driving record); no additional fine for the DWLS 1.

K. Driving While License Suspended 2nd Degree (GM, RCW 46.20.342 (1)(b))

ELEMENTS:

1. Driving a motor vehicle in Snohomish County, Washington;
2. While driver's license suspended or revoked;
3. Period of revocation was still in effect;
4. While the defendant was not eligible to reinstate.

REQUIRED DOCUMENTS

1. Police reports, PC notes, etc.
2. Certified copy of driving record containing notice of revocation and notice of right to hearing.
3. DOL custodian of records is required for trial.

MAXIMUM PENALTY: 364 days and \$5,000 fine.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days/364 days suspended for 2 years; \$200 fine with \$4,800 suspended (including CFA). If defendant is licensed, reduce to DWLS 3.

Second Offense: 364 days with all but 2 to 10 days suspended, \$300 fine with \$4,700 suspended (including CFA).*

Third Offense: 364 days with all but 10 to 30 days suspended, \$300 fine with \$4,700 suspended (including CFA).*

Fourth Offense: 364 days with all but 30 to 90 days suspended, \$5,000 fine with \$4,700 suspended (including CFA).*

For each additional DWLS 2, add 30 days in jail.

**If defendant is licensed, recommend no re-suspension.*

CONDITIONS OF PROBATION:

1. No criminal law violations;
2. No driving without valid license and insurance;
3. 2 years of probation.

L. Assault 4th Degree (GM, RCW 9A.36.041)

ELEMENTS:

1. In Snohomish County, Washington;
2. Defendant intentionally assaulted another; and
3. Defendant did not act in self-defense.

MAXIMUM PENALTY: 364 days in jail and \$5,000 fine.

MINIMUM PENALTY: None, but loss of right to possess a firearm if assault is DV.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days with all but 0-10 suspended; \$200 fine with \$4800 suspended; CFA.

Second Offense: 364 days with all but 7-30 suspended; \$300 fine with \$4700 suspended; CFA.

Third Offense: 364 days with all but 30-180 suspended; \$500 fine with \$4500 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations.
2. Restitution, if any.
3. No contact with victim or family of victim, if appropriate. Enter a new no contact order if a pre-conviction order is in effect.
4. Drug/alcohol assessment and follow-up treatment, if appropriate.
5. Anger management (non-DV cases).
6. DV victims' panel (DV cases).
7. Loss of right to possess firearms (mandatory in DV cases).
8. 5 years of probation (DV cases) or 2 years of probation (non-DV cases)

AGGRAVATING FACTORS:

1. Defendant's actions posed a substantial threat of serious injury or death to the victim or another.
2. Victim was especially vulnerable to harm due to age, infirmity or other factor.
3. Defendant attempted to coerce victim or other witnesses into not reporting or testifying truthfully about the incident.
4. Defendant has a substantial history of violent acts against the victim or other victims.
5. Victim of the assault was a minor or the assault was committed in the presence of a minor.

MITIGATING FACTORS:

1. The assault was *de minimis* and there is no other known act of violence by the defendant against the victim.
2. The incident involved mutual combat and the combatants were of equal or nearly equal size or combat capabilities.
3. The defendant acted in self-defense or the defense of others.

M. Violation Of Protection Order (GM, RCW 26.50.110)

ELEMENTS:

1. That defendant violated the provisions of a valid protection order that excluded him/her from a residence, workplace, school, or day care or a provision that restrained him/her from committing acts of domestic violence or having contact with victim, victim's children, or members of victim's household;
2. That the defendant knew of the existence of the protection order; and
3. That the acts occurred in Snohomish County.

REQUIRED DOCUMENTS:

1. Certified copy of protection order.
2. Certified copy of return of service (unless order states that respondent appeared and service is not required).

MAXIMUM PENALTY: 364 days and \$5,000 fine.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 with all but 0 to 5 days suspended; \$300 fine with \$4700 suspended; CFA.

Second Offense: 364 with all but 10 to 30 days suspended; \$300 fine with \$4700 suspended.

Third Offense: 364 with all but 30 to 180 days suspended; \$300 fine with \$4700 suspended.

CONDITIONS OF PROBATION:

1. No criminal violations;
2. No contact with the victim or further violations of the order;
3. Other conditions may be recommended as appropriate; and
4. 5 years of probation.

NOTE: VPO may be charged as felony. Pursuant to RCW 26.50.110(4), an assault or any conduct that is reckless and creates a substantial risk of death or serious physical injury that is a violation of order is a Class C felony. Also, pursuant to subsection (5) of the statute, a VPO is a Class C felony if offender has at least 2 previous convictions for violating various court orders. A District Court DPA should consult with a felony DPA before sending charge to a felony unit.

N. Harassment (GM, RCW 9A.46.020)

ELEMENTS:

1. The defendant knowingly threatened:
 - a. to cause bodily injury immediately or in the future to another, or
 - b. to cause physical damage to the property of the another, or
 - c. to subject another to physical confinement or restraint, or
 - d. maliciously to do any act which was intended to substantially harm another with respect to his/her physical or mental health or safety; and
2. The words or conduct of the defendant placed the person threatened in reasonable fear that the threat would be carried out;
3. The defendant acted without lawful authority; and
4. The acts occurred in Snohomish County.

MAXIMUM PENALTY: 364 days and \$5,000 fine.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 with all but 0 to 5 days suspended; \$300 fine with \$4700 suspended; CFA.

Second Offense: 364 with all but 10 to 30 days suspended; \$300 fine with \$4700 suspended; CFA.

Third Offense: 364 with all but 30 to 180 days suspended; \$300 fine with \$4700 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal law violations;
2. No-contact order (if DV) or no-contact condition (non-DV) as appropriate; and
3. Probation for 5 years (DV) or 2 years (non-DV).

NOTE: Harassment may be charged as a felony. Harassment is a class C felony if:

1. The defendant has previously been convicted of a crime of DV harassment or harasses a person specifically named in a no-contact or anti-harassment order; or
2. The defendant harasses by threatening to kill someone.

A District Court DPA should consult with a felony DPA before sending charge to a felony unit.

O. Reckless Endangerment (GM, 9A.36.050)

ELEMENTS:

1. Defendant acted recklessly;
2. Conduct created a substantial risk of death or serious physical injury to another person, to-wit: (identify victim).

MAXIMUM PENALTY: 364 days and \$5,000 fine.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days with all but 0-10 days suspended; \$150 fine with \$4850 suspended; CFA.

Second Offense: 364 days with all but 15-30 days suspended; \$250 fine with \$4750 suspended; CFA.

Third Offense: 364 days with all but 90 days suspended; \$350 fine with \$4650 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations;
2. No contact with victim and family (if appropriate);
3. Two years of probation (5 years if DV); and
4. Forfeiture of the firearm with written order (if appropriate).

P. Firearm and Weapon Violations (GM or M, RCW 9A.41)

ELEMENTS: See RCW

MAXIMUM PENALTY: Varies

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 or 90 days with all but 0-10 days suspended; \$150 fine with rest suspended; CFA.

Second Offense: 364 or 90 days with all but 15-30 days suspended; \$250 fine with rest suspended; CFA.

Third Offense: 364 or 90 days with all but 90 days suspended; \$350 fine with rest suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations;
2. No contact with victim and family (if appropriate);
3. Forfeiture of the firearm/weapon with written order (if appropriate); and
4. Two years of probation.

NOTE: Some cases referred by officers as firearms violations may be more appropriately charged as felonies. Consult with the lead DCU attorney when in doubt.

Q. Malicious Mischief – Third Degree (GM, RCW 9A.48.090)

ELEMENTS:

1. Knowingly and maliciously caused physical damage to the property of another; or
2. Wrote, painted or drew an inscription, figure or mark of any type on a public structure or real or personal property owned by another person without the express permission of the owner or operator of the property; and
3. Acts occurred in Snohomish County, Washington

MAXIMUM PENALTY: 364 days in jail and \$5,000 fine plus costs and assessments.

MINIMUM PENALTIES: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days jail, all suspended; \$150 fine with \$4850 suspended; CFA.

Second Offense: 364 days jail, all but 0-5 days suspended; \$300 fine with \$4700 suspended; CFA.

Third Offense: 364 days jail, all but 15-30 days suspended; \$300 fine with \$4700 suspended; CFA.

CONDITIONS OF PROBATION:

1. Restitution (if any);
2. No criminal violations;
3. No contact with victims (if appropriate); and
4. 2 years of probation (5 years if DV).

Note: Indicate if this is a DV charge.

- R. Theft Third Degree (GM, 9A.56.050) and Possession Of Stolen Property Third Degree (GM, 9A56.140)

THEFT 3 ELEMENTS:

1. The defendant wrongfully obtained or exerted unauthorized control over or by color or aid of deception obtained control over, or appropriated lost or misdelivered property or services of another;
2. The defendant intended to deprive the other person of the property or services; and
3. The acts occurred in Snohomish County, Washington.

POSSESSION OF STOLEN PROPERTY 3 ELEMENTS:

1. The defendant knowingly received, retained, possessed, concealed, or disposed of stolen property;
2. The defendant acted with knowledge that the property had been stolen;
3. The defendant withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto; and
4. The acts occurred in the Snohomish County, Washington.

MAXIMUM PENALTY: 364 days jail, \$5,000 fine.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days, all suspended; \$150 fine with \$4850 suspended; CFA.

Second Offense: 364 days, all but 2 days suspended; \$250 fine with \$4750 suspended; CFA.

Third Offense: 364 days, all but 30 days suspended; \$350 fine with \$4650 suspended; CFA.

CONDITIONS OF PROBATION:

1. No contact with victim (if appropriate);
2. Restitution (if appropriate);
3. No criminal violations; and
4. 2 years of probation.

S. Criminal Trespass – First Degree (GM, 9A.52.070)

ELEMENTS:

1. Knowingly enter or remain in a building;
2. Knowledge that the entry or remaining was unlawful; and
3. Acts occurred in Snohomish County, Washington.

MAXIMUM PENALTY: 364 days in jail and \$5,000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days jail, all but 0-3 days suspended; \$300 fine with \$4700 suspended; CFA.

Second Offense: 364 days jail, all but 7-15 days suspended; \$500 fine with \$4500 suspended; CFA.

Third Offense: 364 days jail, all but 30-60 days suspended; \$500 fine with \$4500 suspended; CFA.

CONDITIONS OF PROBATION:

1. Restitution (if any);
2. No contact (if appropriate);
3. No criminal violations; and
4. 2 years probation (5 years if DV).

NOTE: Indicate if this is a DV charge. If DV, a conviction results in the loss of firearm rights..

T. Criminal Trespass Second Degree (M, RCW 9A.52.080)

ELEMENTS:

1. Knowingly enter or remain in or upon premises of another;
2. Knowledge that the entry or remaining was unlawful; and
3. Acts occurred in Snohomish County, Washington.

MAXIMUM PENALTY: 90 days in jail and \$1,000 fine plus costs and assessments.

MINIMUM PENALTY: None

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days jail, all but 0-3 days suspended; \$150 fine with \$4850 suspended; CFA.

Second Offense: 90 days jail, all but 1-10 days suspended; \$300 fine with \$4700 suspended; CFA.

Third Offense: 90 days jail, all but 10-30 days suspended; \$500 fine with \$4500 suspended; CFA.

CONDITIONS OF PROBATION:

1. Restitution (if any);
2. No contact (if appropriate);
3. No criminal violations;
4. 2 years of probation (5 years if DV)

NOTE: Indicate if this is a DV charge under RCW 10.99.020.

U. Resisting Arrest (M, RCW 9A.76.040)

ELEMENTS:

The defendant resisted or attempted to resist a peace officer from lawfully arresting him/her.

MAXIMUM PENALTY: 90 days in jail and \$1,000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days jail, all but 0-5* days suspended; \$150 fine with \$850 suspended; CFA.

Second Offense: 90 days jail, all but 3-10* days suspended; \$250 fine with \$750 suspended; CFA.

Third Offense: 90 days jail, all but 30* days suspended; \$500 fine with \$500 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations; and
2. 2 years of probation.

*In egregious cases using significant force against the officer, more jail time may be appropriate.

V. Obstructing (GM, 9A.76.020) or Making a False Statement (9A.76.175)

ELEMENTS (Obstructing):

The defendant willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his/her official powers or duties.

ELEMENTS (Making a False Statement):

The defendant knowingly makes a false or misleading material statement to a public servant. (A material statement is defined as a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his/her official powers or duties.)

MAXIMUM PENALTY: 364 days in jail and \$5,000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days jail, all suspended; \$150 fine with \$4850 suspended; CFA.

Second Offense: 364 days in jail, all but 2-30 days suspended; \$250 fine with \$4750 suspended; CFA.

Third Offense: 364 days in jail, all but 15-90 days suspended; \$350 fine with \$4650 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations;
2. 2 years of probation.

W. Refusal To Give Information Or Cooperate/Refusal To Obey Law Enforcement Officer (M, RCW 46.61.020, RCW 46.61.021)

REFUSAL TO GIVE INFORMATION ELEMENTS:

1. That the defendant, in Snohomish County, Washington;
2. While operating or in charge of a vehicle;

3. When requested or signaled by a police officer:
 - a. did refuse to give his/her name and address and the name and address of the owner of such vehicle, or
 - b. gave a false name and address, or
 - c. did refuse or neglect to stop, or
 - d. did refuse to produce the certificate of license registration of such vehicle, insurance identification or vehicle license.

REFUSAL TO OBEY LAW ENFORCEMENT OFFICER ELEMENTS:

1. That the defendant, in Snohomish County, Washington;
2. While operating or in charge of a vehicle;
3. When requested or signaled by a police officer:
 - a. did refuse to stop, or
 - b. did refuse to identify him or herself, or
 - c. did refuse to give his/her current address, or
 - d. did refuse to sign an acknowledgement or receipt or notice of infraction.

MAXIMUM PENALTY: 90 days in jail and \$1,000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days, all suspended; \$150 fine with \$850 suspended; CFA.

Second Offense: 90 days in jail with all but 1 day suspended; \$250 fine with \$750 suspended; CFA.

Third Offense: 90 days with all but 5-10 days suspended; \$250 fine with \$750 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal violations; and
2. 2 years of probation.

X. Minor In Possession GM RCW 66.44.270(2)(a)

ELEMENTS:

It is unlawful for any person under the age of twenty-one to possess, consume, or otherwise acquire any liquor in Snohomish County.

MAXIMUM PENALTY: 364 days in jail and \$5,000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days, all suspended; \$100 fine with \$4900 suspended; CFA.

Second Offense: 364 days, all suspended; \$200 fine with \$4800 suspended; CFA.

Third Offense: 364 days with all but 3 days suspended; \$100 fine with \$4900 suspended; CFA.

CONDITIONS OF PROBATION

1. No criminal law violations;
2. No alcohol violations;
3. Alcohol and Drug Information School (if first offense)
4. Alcohol evaluation and comply with follow-up treatment (if second or subsequent offense); and
5. 2 years probation.

NOTE: For people without criminal history, this office will generally agree that if the defendant can prove successful completion of alcohol/drug information school, this office will consider dismissing the case.

Y. Minor Purchasing Or Attempting To Purchase Liquor (M, RCW 66.44.290)

ELEMENTS:

1. That the defendant, in Snohomish County, Washington;
2. Under the age of 21; and
3. Purchased or attempted to purchase liquor.

MAXIMUM PENALTY: 90 days in jail and \$1,000 fine plus costs and assessments.

MINIMUM PENALTY: RCW 66.44.290 states that a minimum fine of \$250 shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days in jail, all suspended; \$250 fine with \$750 suspended; CFA.:

Second Offense: 90 days in jail with all but 1 day suspended; \$250 fine with \$750 suspended; CFA.

Third Offense: 90 days in jail with all but 3 days suspended; \$300 fine with \$700 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal law violations;
2. No alcohol violations;
3. Alcohol and Drug Information School (if first offense);
4. Alcohol evaluation and comply with all follow-up treatment (if second or subsequent offense); and
5. 2 years of probation.

NOTE: For people without criminal history, this office will generally agree that if the defendant can prove successful completion of alcohol/drug information school, this office will consider dismissing the case.

- Z. Minor Exhibiting The Effects Of Having Consumed Liquor (M, 66.44.270(2)(b))

ELEMENTS:

1. That the defendant, in Snohomish County;
2. Under the age of 21;
3. In a public place or in a motor vehicle in a public place; and
4. exhibited effects of having consumed liquor.

MAXIMUM PENALTY:

First Offense:	2 months and \$500 fine
Second Offense:	6 months and \$500 fine
Third Offense:	12 months and \$500 fine

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

The sentencing recommendation is the same as for MINOR IN POSSESSION.

NOTE: For people without criminal history, this office will generally agree that if the defendant can prove successful completion of alcohol/drug information school, this office will consider dismissing the case.

AA. Possession Of Drug Paraphernalia (M, RCW 69.50.412 or SCC 10.48.020)

SNOHOMISH COUNTY CODE ELEMENTS:

1. That the defendant, in Snohomish County, Washington;
2. Used or possessed with intent to use;
3. An item of drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

RCW 69.50.412 is almost identical to the SCC, but it does not have the “possessed with intent to use” language.

Note: As of December 6, 2012, possession of marijuana paraphernalia is no longer a crime.

MAXIMUM PENALTY: 90 days in jail and \$1,000 fine plus costs and assessments.

MINIMUM PENALTY: Per RCW 69.50.425, “A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars.” Courts have held that State law pre-empts the county code for punishment of this offense. Therefore, the penalty for conviction under the county code is the same as the penalty under the RCW.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days imposed with 89 days suspended; \$250 fine with \$750 suspended; CFA.

Second Offense: 90 days imposed with 89 days suspended; \$500 fine with \$500 suspended; CFA.

Third Offense: 90 days imposed with 80-89 days suspended; \$500 fine with \$500 suspended; CFA.

CONDITIONS OF PROBATION:

1. No criminal law violations;
2. No alcohol or drug violations;
3. Alcohol and Drug Information School (if first offense);
4. Drug evaluation and follow up (if second or subsequent offense);
and
5. 2 years of probation (inactive probation okay for first offense).

NOTE: For people without criminal history, this office will generally agree that if the defendant can prove successful completion of alcohol/drug information school, this office will consider dismissing the case.

BB. Vehicle Prowling 2nd Degree (GM, 9A.52.100)

ELEMENTS:

1. The defendant, in Snohomish County, Washington;
2. with intent to commit a crime against a person or property therein;
and
3. did enter or remain in a vehicle other than a motor home, or a vessel equipped for propulsion by mechanical means or sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

MAXIMUM PENALTY: 364 days in jail and \$5,000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 364 days in jail, all but 0-10 days suspended; \$250 fine with \$4750 suspended; CFA.

Second Offense: 364 days in jail, all but 10-30 days suspended; \$350 fine with \$4650 suspended; CFA.

Note: Third offense is a felony.

CONDITIONS OF PROBATION:

1. Restitution (if appropriate);
2. No criminal law violations; and
3. 2 years of probation.

CC. Prostitution (M, RCW 9A.88.030)

ELEMENTS:

1. The defendant, in Snohomish County, Washington;
2. Engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

MAXIMUM PENALTY: 90 days in jail and \$1000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days in jail, all suspended; \$250 fine with \$750 suspended; CFA.

Second Offense: 90 days in jail with all but 3-10 days suspended: \$500 fine with \$500 suspended; CFA.

Third Offense: 90 days in jail with all but 30-90 days suspended; \$700 fine with \$300 suspended; CFA.

CONDITONS OF PROBATION:

1. No criminal law violations;
2. \$50 mandatory assessment per RCW 9A.88.120;
3. Private HIV test and proof of testing; and
4. 2 years probation.

DD. Patronizing A Prostitute (M, RCW. 9A.88.110)

ELEMENTS:

1. The defendant, in Snohomish County, Washington;
2. Pursuant to a prior understanding, pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with the defendant; or

3. Pays or agrees to pay a fee to another person pursuant to an understanding that in return therefore such person will engage in sexual conduct with the defendant; or
4. Solicits or requests another person to engage in sexual conduct with the defendant in return for a fee.

MAXIMUM PENALTY: 90 days in jail and \$1000 fine plus costs and assessments.

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 90 days, all suspended; \$250 fine with \$750 suspended; CFA.

Second Offense: 90 days, all but 3-10 suspended; \$500 fine with \$500 suspended; CFA.

Third Offense: 90 days with all but 30-90 suspended; \$700 fine with \$300 suspended; CFA.

CONDITIONS OF PROBATION:

1. \$50 mandatory assessment per RCW 9A.88.120;
2. Private HIV test and proof of testing;
3. Mandatory fee per RCW 9A.88.120(1)(c);
 - a. \$1500 for first offense
 - b. \$2500 for second offense
 - c. \$5000 for third or subsequent offense
4. No subsequent arrests for patronizing or commercial sexual abuse of a minor per RCW 9A.88.130;
5. Order to stay out of geographic area where arrested unless would interfere with legitimate employment or residence per RCW 9A.88.130;
6. Attend class regarding the negative costs of prostitution per RCW 9A.88.130; and
7. 2 years of probation.

EE. Bail Jumping (M, RCW 9A.76.170(1))

ELEMENTS:

1. The defendant having been held for, charged with or convicted of a gross misdemeanor or misdemeanor
2. And having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before a court of the State of Washington
3. Knowingly fails to appear as required.

REQUIRED DOCUMENTS:

1. Certified copy of Information/Complaint*
2. Certified copy of Bail or release order
3. Certified copy of document giving the defendant notice of his/her court date
4. Certified copy of the docket
5. A copy of the tape recorded proceeding of the court date defendant failed to appear at.

*A court clerk will need to appear on your witness list and will be the witness used to admit the above exhibits.

MAXIMUM PENALTY: 90 days jail and \$1000 fine

MINIMUM PENALTY: None.

STANDARD SENTENCING RECOMMENDATION:

First Offense: 0-90 days jail; \$200 fine, no probation.

Second Offense: 10-90 days jail; \$300 fine, no probation.

Third Offense: 30-90 days jail; \$500 fine, no probation.

AGGRAVATING FACTORS:

1. Witnesses become unavailable because of the delay caused by the defendant's bail jumping.
2. The State's case on the original charge is weakened due to the delay caused by the defendant's bail jumping.
3. The defendant is in warrant status for 90 days or more.
4. The defendant has a history of failing to appear, obstructing or otherwise interfering with the administration of justice.
5. The defendant has extensive criminal history.
6. The defendant is picked up on a warrant rather than turning himself/herself in.

7. The specific facts of the case demonstrate a lack of respect for the criminal justice system or court system beyond a typical failure to appear.

MITIGATING FACTORS:

1. The defendant is in warrant status for less than 45 days.
2. The defendant turns himself/herself in and quashes the warrant.
3. The defendant turns himself/herself into the jail or law enforcement.
4. The defendant is inexperienced with the criminal justice system.

CHAPTER NINE SUPERIOR COURT CHARGING AND DISPOSITION STANDARDS

9.00 INTRODUCTION

These Standards are intended to govern the charging and disposition of cases in Superior Court. Cases prosecuted under the Juvenile Justice Act are addressed in Chapter 10, although some of the standards set forth in this chapter do apply to juvenile court cases.

Incorporated into these Guidelines are all of the Standards set forth in Chapters One through Five. In the event of a conflict between a Standard in this Chapter and a Standard in any other Chapter, the Standard of this Chapter shall be applied to a case in Superior Court.

These Standards incorporate by reference all relevant provisions of the Sentencing Reform Act (SRA). See RCW 9.94A. All Deputy Prosecutors are expected to be completely familiar with the Act and its legislative amendments from year to year. Deputy Prosecutors must remain aware of SRA changes as well as the level of county funding resources for prosecution and jail incarceration.

Felony referrals are received from law enforcement agencies and are reviewed by Deputy Prosecutors. Some referrals are identified as “deadline” cases and may be charged into Everett District Court to allow additional time for the police to continue or complete their investigation. Referrals are either charged, declined, or returned to police for follow-up investigation. Charging options addressed within these guidelines include prosecution as a felony crime in Superior Court; for qualifying less serious felony crimes, allowing an expedited guilty plea to a lesser misdemeanor crime; Drug Court prosecution in lieu of prosecution in traditional court; and diverting qualifying felony offenders with substance abuse and/or mental health problems from traditional court into the Treatment Alternatives to Prosecution (TAP) program.

9.01 FOLLOW-UP REQUESTS AND DECLINES

A. Deadline cases, SAU, Violent and Domestic Violence Cases

A “deadline” case is one in which the defendant is held in custody unless bail is posted, or a case in which release conditions have been imposed on the defendant, at the first court appearance after arrest on probable cause. When a court sets bail or imposes release conditions at this hearing, it also sets a deadline for a charging document to be filed in court. The bail requirement/release conditions will expire if charges are not filed prior to the deadline. CrRLJ 3.2.1.

When additional information or investigation is necessary to make a reasoned and informed filing decision, a request for investigation shall be sent to the submitting law enforcement agency. The time allowed for completion of the request will depend upon whether there is a filing deadline in the case, whether the request calls for crime laboratory analysis, and other considerations. For cases without a filing deadline, generally, the first request shall allow three weeks for completion; if a second request is necessary, an additional two weeks for completion. If the requested information is essential to charge and has not been received after the second request, the case shall be declined.

B. Non-deadline Non-violent and Drug Cases

When additional information or investigation is necessary to make a reasoned and informed filing decision and the suspect is not in custody, the case shall be declined. The decline notice shall list all the deficiencies that prevent the case from being charged. Examples of information that is necessary for the charging decision include: a signed stolen report for motor vehicle theft; evidence that the suspect knew the item was stolen for PSP; evidence of value for theft, PSP or malicious mischief; a written statement from the victim; a copy of any search warrant documents; and reports from all officers who played a significant part in the investigation, including arrest of the suspect. The declined case shall be re-opened if it is resubmitted with all the deficiencies listed in the decline notice corrected.

When additional information or investigation is not necessary for the charging decision, but will be needed if the case proceeds to trial, the charging Deputy Prosecutor shall charge the case and shall send a “Needed for Trial” request. Generally, a “Needed for Trial” request shall

be completed within 30 days. If the request is not completed timely, the trial Deputy Prosecutor shall re-evaluate the case to determine whether the charge should be reduced or dismissed without prejudice. In a drug case, generally, a positive field test on the suspected controlled substance is sufficient proof that it is a controlled substance for charging the drug crime. Only when the assigned trial prosecutor concludes that the case will go to trial will a Needed for Trial request be made for crime laboratory analysis of the substance, in order to conserve crime laboratory resources.

C. Procedure—Reconsideration of Decline

The Deputy Prosecutor shall set forth on a decline form the specific reasons for declining a case. A copy of the decline form shall be given to the officer who referred the case. If the officer is not satisfied with the decision after discussing it with the Deputy Prosecutor assigned to the case, the Deputy Prosecutor shall advise the officer that the decision may be addressed with his/her lead Deputy Prosecutor and the Chief Criminal Deputy, in that order. The Prosecuting Attorney will personally review any decline at the request of a chief of police or the elected Snohomish County Sheriff.

D. Notice to Victim

The victim or victim's family, if the victim is deceased, normally shall be notified of any decline of a violent or sex crime. When practical, other victims should be notified when a case is declined. See §5.04.

E. Concurrent Federal Jurisdiction

Generally, the U.S. Attorney's Office only accepts cases when there is concurrent jurisdiction and when federal prosecution offers a greater penalty, such as when a convicted felon commits a new felony with a firearm. When the U.S. Attorney's Office decides to file charges in federal court regarding the same incident, generally, this office shall decline to file charges or shall dismiss charges in state court.

F. Decline in Favor of Misdemeanor Prosecution

We will decline to file a nonviolent felony charge and instead refer the case for consideration of misdemeanor prosecution in District Court or Municipal Court when the loss value is less than or equal to \$1,000, even though the statutory minimum loss value is \$750 for most of these felonies. There will be some exceptions. We will continue to file a felony,

even if the loss value is over \$750 but less than \$1,000, when the crime is: car theft; residential burglary; commercial burglaries in which the main structure was entered; DV property crimes; and ID theft/access device crimes with 3 or more victims, evidence of manufacturing, vulnerable victim, or ID taken in a residential burglary, robbery or theft from a person.

9.02 EXPEDITED CRIMES

The Snohomish County Prosecutor's Office seeks to hold all defendants accountable for their crimes. Prosecution to the fullest extent allowed by law, often involving jury trials, lengthy incarceration, and appeals to higher courts that extend years beyond sentencing, is costly. The Prosecutor's Office recognizes that criminal justice resources are increasingly scarce and often subject to competing interests. In order to have sufficient resources for holding the most serious felony offenders accountable for their crimes, it is necessary to allocate less resources to the less serious felony crimes which have a lesser impact on victims and the public. Accordingly, certain qualifying felonies are resolved by allowing the defendants to plead guilty to a lesser gross misdemeanor crime. These cases are charged in Everett District Court as the felony offense that best reflects the defendant's criminal behavior, but disposed of by a guilty plea to a lesser gross misdemeanor offense. A defendant so charged will be required to admit responsibility and plead guilty to one or more gross misdemeanors and to join in the State's sentencing recommendation, thereby obtaining some measure of justice but avoiding lengthy and costly prosecution procedures.

A. Eligibility of Non-Violent Felony Offenses for Expediting

1. In general, the charging prosecutor may expedite a non-violent felony crime with a total loss value of \$5,000 or less. However, we retain the discretion to charge the matter as a felony based upon such factors as unusually long criminal history, high impact offender, other pending criminal cases, or nature of the current offense.
2. The following non-violent felony offenses are *ineligible* for expediting, regardless of loss value amount:
 - a. thefts from the person;
 - b. identity theft involving 3 or more victims, evidence of manufacturing, a vulnerable victim, or ID taken in a residential burglary, robbery, or theft from a person;

- c. vehicle thefts other than Second Degree Taking a Motor Vehicle in which the vehicle was abandoned within 24 hours and was not substantially damaged;
- d. theft of a firearm or possession of a stolen firearm;
- e. possession of property stolen in a robbery or residential burglary and there is probable cause that the defendant committed the robbery or residential burglary;
- f. residential burglary and second degree burglary, unless the entry did not exceed a fenced area, an open garage or a carport, and the sole purpose of the burglary was theft.

B. Eligibility of Drug Felony Offenses for Expediting

1. In general, the charging prosecutor may expedite the following possessory drug felony crimes. However, the offender is *ineligible* if he/she has 9 or more felony convictions AND 1 is a Class A or a sex offense, or if the offender has had 3 or more expedited convictions within the past 18 months. In addition, we retain the discretion to charge the matter as a felony based upon such factors as unusually long criminal history, high impact offender, other pending criminal cases, or the nature of the current offense.
 - a. Possession of less than 30 ounces (dry weight) of marijuana, including leaf and stems, AND less than 30 plants, even if there is evidence of intent to deliver. These amounts take into consideration that the Washington Department of Public Health has stated that a 60-day supply for a medical marijuana patient is 24 ounces of processed marijuana AND 15 plants, and typically, by the time of trial, defendants have a doctor's authorization for more than that amount.
 - b. Prescription forgery or fraud, when there is insufficient reliable evidence of dealing.
 - c. Possession of 3 grams or less, without packaging, of any controlled substances such as heroin, cocaine, methamphetamine, MDMA ("ecstasy"), and other narcotics or dangerous drugs, when there is insufficient reliable evidence of dealing.

d. Possession of 1 to 50 tablets or capsules of unlawfully possessed prescription drugs (except Oxycontin, a time-released formula containing 40 to 180 mg of the controlled substance oxycodone), regardless of weight or percentage of content, when there is insufficient reliable evidence of dealing.

e. Possession of 10 pills or less of Oxycontin (a time-released formula containing 40 to 180 mg of the controlled substance oxycodone) when there is insufficient reliable evidence of dealing.

E. Charge Selection

Expedited crimes should be charged as the applicable felony. If the conduct involved does not constitute a felony, the case should be declined in favor of municipal prosecution or filed as a misdemeanor in the appropriate District Court division. If the defendant does not accept the offer in an expedited case, the Deputy Prosecutor shall be prepared to prosecute the case in Superior Court as the applicable felony.

F. Venue

All expedited crimes will be filed in Everett District Court.

G. Demand for Preliminary Hearing

Defense demand for a preliminary hearing will constitute rejection of the expedited offer. The case will be re-filed as the appropriate felony in Snohomish County Superior Court.

H. Discovery

Upon first appearance on the charge in Everett District Court, copies of all discoverable material shall be delivered to the defense attorney as soon as the identity of the defense attorney can be determined.

I. Disposition

These policies determine the offer made to the defendant in return for a plea of guilty to an expedited offense. That offer will be provided to the defense in writing as soon as possible after the case is filed. The defense shall be advised that if the defendant does not enter a guilty plea to the indicated misdemeanor(s) or gross misdemeanor(s) and agree to the sentence recommendation by the felony dismissal date, the case will be re-filed as the appropriate felony into Snohomish County Superior Court.

1. Charge Reduction of Expedited Felony Crimes

The following charge reductions shall be made in exchange for a guilty plea in expedited cases:

- a. Poss. Stolen Property 2: Attempted Poss. Stolen Property 2.
- b. Theft 2: Attempted Theft 2.
- c. Forgery: Attempted Forgery.
- d. Identity Theft 2: Attempted Identity Theft 2.
- e. Taking Motor Vehicle 2: Attempted TMV 2.
- f. U.I.B.C.: Attempted U.I.B.C.
- g. Malicious Mischief 2: Attempted Malicious Mischief 2.
- h. Vehicle Prowl 1: Attempted Vehicle Prowl 1.
- i. Second Degree Burglary: Criminal Trespass 1 and Theft 3.
- j. Poss. Of Contr. Substance: Soliciting Poss. of Contr. Substance.
- k. Prescription Forgery/Fraud: Soliciting Poss. of Contr. Substance.

The “attempted” felony crime is used in the disposition so that in any future charging decisions, Deputy Prosecutors can recognize when a defendant has received the benefit of an expedited disposition.

2. Number of Counts

Ordinarily, the defendant will be charged initially with one felony and will be expected to plead guilty to one misdemeanor. An exception applies when there is convincing admissible evidence that DUI or In Physical Control was a part of the felony crime. In that case, the defendant will be required to plead guilty to an additional charge of DUI or In Physical Control as part of the agreed disposition.

3. Defendant Responsibility

The defendant must admit in writing to all elements of the reduced charge(s). The State will not accept an *Alford* plea to an expedited offense.

4. Sentence Recommendations

The sentence recommendation for an expedited crime shall not exceed the SRA sentencing range applicable to the offense, had it been charged as a felony. Normally, the sentence recommendation shall include:

- a. suspended sentence with two years probation,
- b. \$1000.00 total financial obligation to the court, and
- c. restitution and a condition of no law violations.

Normally, the State will not recommend any jail time imposed, but it is within the discretion of the charging DPA to recommend it. In addition, it is within the discretion of the charging DPA to recommend crime-related prohibitions and treatment conditions.

9.03 TREATMENT ALTERNATIVES TO PROSECUTION (DIVERSION PROGRAM)

TAP stands for Therapeutic Alternatives to Prosecution. TAP is an alternative to prosecution for adult offenders with drug/ alcohol or mental health problems that have contributed to their involvement with the criminal justice system. TAP is a pre or post-charging diversion program through which a person is held accountable for the commission of a felony without there being formal adjudication, based upon that person's voluntary entry into the program and voluntary compliance with specified conditions. The program is designed to address crimes that are caused by an underlying chemical substance addiction or mental health problem, to assist offenders who are amenable to behavior change, to eliminate substance abuse and/or maintain stable mental health and to assure complete restitution for victims.

Entry into the program is controlled solely by the Office of the Prosecuting Attorney, based on the criteria below. The Prosecutor's Office reserves the right to deny entry into the program even when the criteria below are met, based on a review of the unique facts of the charged case, defendant's prior criminal history of concern (such as domestic violence history), and other relevant factors. To be considered for TAP, the offender must sign a release allowing the TAP Counselor access to all medical and mental health records concerning the offender, and allowing the TAP Counselor the

ability to consult with medical providers, substance abuse treatment providers and mental health professionals who have diagnosed, treated or monitored the offender or are currently diagnosing, treating or monitoring the offender. A decision to deny or accept an offender into the program may be appealed to the Unit Lead DPA to which the case is assigned.

Offenders make the decision whether to enter the program with the assistance of counsel. Upon entry into the program, the offender must stipulate to the admissibility of police reports and sign a statement of guilt, which will be used to prosecute the case if the offender is terminated from the program for unsatisfactory performance. The offender also must sign a release allowing the TAP Counselor continued access to all medical and mental health records concerning the offender, and allowing the TAP Counselor the ability to consult with medical providers, substance abuse treatment providers and mental health professionals who have diagnosed, treated, or monitored the offender or currently are diagnosing, treating, or monitoring the offender. If the defendant successfully completes the program, the charges are dismissed with prejudice.

A. Current Offenses Excluded From TAP:

1. Violent offenses, as defined in RCW 9.94A.030 and violent or predatory sex offenses.
2. Firearm offenses and offenses with a firearm enhancement.
3. Offenses with a school zone enhancement.
4. Residential burglary, except when:
 - a. the residence belongs to a relative and the victim agrees to TAP, or
 - b. the residence was obviously unoccupied and entered only for food and shelter and the victim agrees to TAP.
5. Third Degree Assault, except when the Deputy Prosecutor and the TAP program Supervisor agree to TAP, after taking into consideration the wishes of the victim.
6. Manufacture of a Controlled Substance, Delivery of a Controlled Substance, and Possession with Intent to Manufacture or Deliver, except when:
 - a. the defendant is a First-Time Offender; and
 - b. the defendant is not involved in selling drugs for profit; and

- c. the weight of the drugs possessed, delivered, or manufactured is not more than three grams, or if marijuana, not more than 30 ounces AND 30 plants, or if pills, not more than 25 pills, or if Oxycontin, not more than 10 pills.
- 7. Manufacture of Methamphetamine, Attempted Manufacture of Methamphetamine, or Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture/Deliver are ineligible, regardless of weight.
- 8. Individuals who are charged with Attempting to Elude are presumed ineligible for TAP. Attempting to Elude cases that did not involve a prolonged chase and did not involve risk to the public may be considered for TAP on a case by case basis.

B. Eligibility Requirements for Offenders

- 1. No more than three felony counts charged or pending charges, other than Possession of a Controlled Substance.
- 2. All current felony counts and pending uncharged felony counts being considered for TAP must be drug, alcohol or mental health related.
- 3. No charged or pending uncharged felony counts that are excluded from TAP eligibility.
- 4. The offender must be out of custody on the charged felony case, and have no other jail holds.
- 5. No prior convictions for violent offenses, as defined by RCW 9.94A.030(54) or for violent or predatory sex offense.
- 6. Offender must not be under a DOSA sentence or be current participant in a Drug Court or Mental Health Court.
- 7. Offender must demonstrate a strong desire to address chemical substance addiction and/or manage mental health problems, and the ability access treatment.

8. During initial screening the offender must truthfully provide any background information including requested treatment or mental health history/records and execute any requested HIPPA or other waivers. In addition the defendant must provide satisfactory proof of the following:
 - a. Offender must timely submit to initial screening and a chemical substance abuse evaluation conducted by an evaluator accepted by the Prosecutor's office that concludes the offender has a chemical substance problem and is an appropriate candidate for chemical dependency treatment; AND/OR
 - b. Offender must submit to initial screening Mental Health assessment conducted by an evaluator accepted by the Prosecutor's Office that concludes that the defendant's predominate diagnosis is DSM-IV Axis I; AND/OR
 - c. On a case by case basis an offender may be considered if the Mental Health assessment conducted by an evaluator accepted by the Prosecutors office concludes that the predominate diagnosis is DSM-IV Axis II, or results from a brain disorder developmental disability, severe depression, or dementia.
9. Offenders will have to have a GAF score of 60 or higher at the time of the TAP intake, a score of 50-60 would be acceptable if the defendant is under the care of a physician or licensed mental health professional per RCW 18.19.200.
10. A defendant who is using medical marijuana must provide written verification from his/her primary physician (not the physician who provided the medical marijuana license) within two weeks of the first TAP appointment that the primary physician agrees that defendant has a medical need for the use of marijuana per RCW 69.51A. The defendant also is required to sign a release of information between the primary physician and the TAP office.
11. The alleged criminal charge forming the basis for the TAP referral must have occurred in Snohomish County.
12. Client must reside in Western Washington in order to participate in TAP.

13. Defendant must reside in the US legally in order to participate in the TAP program.
14. Defendant must admit guilt and accept responsibility for their criminal actions.

9.04 FILING

- A. The Everett District Court should be the only District Court in which a felony is filed. Felonies should only be filed in Everett District Court when:
 1. the case is being handled as an expedited crime;
 2. when there are specific evidentiary reasons for a preliminary hearing to be held; or
 3. when the investigation is incomplete, but the dangerousness of the offense or the likelihood that the defendant will not appear for court if released, indicates that a charge is necessary to obtain an arrest warrant or to retain the defendant in custody.
- B. Felony charges against juvenile offenders shall be filed in Juvenile Court, except when an “automatic decline” to adult court is mandated by RCW 13.04.030. When the “automatic decline” statute mandates filing a felony charge against a juvenile in adult court, the case shall be handled by the adult court Felony Unit of the Prosecutor’s Office. However, the Juvenile Unit will assist on the probable cause hearings in Juvenile Court, and as otherwise requested. Likewise, when there is a discretionary ruling to decline Juvenile Court jurisdiction in favor of adult court jurisdiction on a felony charge against a juvenile, the juvenile court charge shall be dismissed and the adult court Felony Unit of the Prosecutor’s Office will take over prosecution of the case.
- C. Superior Court should be used for all other felonies.
- D. The Prosecutor’s Office will transmit to law enforcement agencies who submit case referrals notice of our case action (whether the case was filed or declined) on a regular basis.

9.05 DEADLY WEAPON AND FIREARM ALLEGATIONS (See RCW 9.94A.825, 9.94A.470, 9.94A.533, AND 9.41.010(7))

A. Definition of Deadly Weapon

Weapons on the statutory list are considered deadly regardless of the circumstances of their use. State v. Thompson, 88 Wn.2d 546, P.2d 323 (1977). These include firearms and knives with blades longer than 3 inches. A firearm is a deadly weapon even if unloaded or incapable of being fired. State v. Faust, 93 Wn. App. 373 (1998); State v. Taylor, 74 Wn. App. 111, 125 (1994); State v. Sullivan, 47 Wn. App. 91 (1987); State v. Newman, 4 Wn. App. 588 (1987).

Any other weapon can be deadly if it has the capacity to inflict death and is used in a manner that may easily or readily produce death. State v. Cook, 69 Wn. App. 412, 416-17 (1993); State v. Shilling, 77 Wn. App. 166, 171-72 (1995). This requires that the person manifest an intention to use the weapon. State v. Gotcher, 52 Wn. App. 350 (1988). A knife with a blade shorter than 3 inches can be a deadly weapon under this test. State v. Thompson, 88 Wn.2d 546 (1977). A motor vehicle is not a deadly weapon for the purposes of alleging a deadly weapon enhancement. State v. Shepard, 95 Wn. App. 787 (1999).

Possession of a deadly weapon must be proved beyond a reasonable doubt. State v. Tongate, 93 Wn.2d 751 (1980). The penalty may be enhanced even though only an accomplice was armed with the deadly weapon. The defendant need not know that the accomplice was armed. State v. Bilal, 54 Wn. App. 778 (1989).

There must be a nexus between the deadly weapon, the defendant and the crime for the deadly weapon enhancement to stand. State v. Holt (Div. II, filed 1/13/04).

B. When Alleged—General Provisions

A deadly weapon or firearm allegation generally will be filed when it is necessary to accurately and adequately describe the nature and seriousness of the defendant's criminal conduct. See General Charging Standards, Section 2.00(A).

If the defendant was not personally armed, a deadly weapon/firearm allegation shall not be filed or shall be dismissed if reliable evidence affirmatively shows that the defendant was unaware that the accomplice was armed.

If conviction of the crime with the deadly weapon or firearm allegation will result in the defendant being deemed a Persistent Offender with a mandatory life sentence, see the Persistent Offender standard 9.17.

C. When Alleged—Deadly Weapon Allegation

A deadly weapon allegation generally will be filed when:

1. A conviction on the underlying charge is likely; and
2. There is sufficient evidence to prove that the defendant or an accomplice was armed with a deadly weapon (such as recovery of the weapon itself); and
3. The weapon was used in the commission of the crime or was present to facilitate the crime.

D. When Alleged—Firearm Allegation

A defendant generally will be required to plead guilty to a firearm allegation when:

1. A conviction on the underlying charge is likely; and
2. There is sufficient evidence to prove that the defendant was armed with a firearm or knew that an accomplice was armed with a firearm; and
3. The defendant did more than fleetingly display the firearm, or there is sufficient admissible evidence of the defendant's intent that the firearm be fired during the commission or flight from the crime.

If the enhancement is not filed in the original Information, and if there is sufficient evidence that the defendant was in possession of an operable firearm, and/or knew that an accomplice was armed with a firearm, then the enhancement will ordinarily be added for trial.

E. When Not Filed or Dismissed

A firearm allegation will not be filed or will be dismissed if objective and reliable evidence indicates that the firearm was inoperable when used during the commission of the crime. The mere fact that the firearm was unloaded is not reason to dismiss the firearm allegation.

Normally, deadly weapon and firearm allegations will not be dismissed in return for a plea of guilty. The correction of errors in the initial charging decision or the development of proof problems which were not apparent at filing are factors which may be considered in determining whether to dismiss deadly weapon and firearm allegations. In addition, a dismissal of a deadly weapon allegation in the interests of justice may be considered, when there is an agreed plea to the charges originally filed, subject to the exception standard 1.02. But caseload pressure and the cost of prosecution, without more, are not sufficient grounds for dismissal. The exception policy shall be followed before a dismissal of a deadly weapon/firearm allegation is offered.

9.06 SENTENCE RECOMMENDATION

A. Procedure

With the exception of deadline cases and cases for which the offender score has not been determined, the initial sentencing recommendation shall be made in writing at the time of filing by the filing deputy. For deadline cases and cases without offender scores, the assigned deputy shall make every effort to obtain the required follow-up investigation and the offender score so that a sentencing recommendation can be made as soon as possible after filing.

B. Sentence Recommendation

1. General Standard

In every case, a sentencing recommendation shall be made pursuant to the Sentencing Reform Act and these policies regardless of the method of conviction. The sentence recommendation shall be determined by finding the correct table for the crime in question, calculating the sentencing range and deciding upon the determinate sentence recommendation. In all cases, full restitution on legally sufficient charges, whether on charged or uncharged crimes, will be sought if possible. These

Standards contemplate that the State's sentencing recommendation normally shall be determined by starting mid-range, and then considering whether there are mitigating factors to go below mid-range or aggravating factors to go above mid-range.

2. Early Plea

An early plea is a plea entered before the omnibus hearing, or in complex cases, a plea entered as soon as possible after the defense has had sufficient time to conduct an adequate investigation. An early plea is an appropriate leniency factor for sentencing purposes. An early plea reduces the impact upon the criminal justice system with its limited resources. Moreover, it avoids the adverse impact of further hearings and a trial upon the victim and witnesses. It also demonstrates that the offender takes responsibility for his/her actions. The initial sentencing recommendation should reflect the benefits to all concerned from an early plea. Therefore, the initial sentence recommendation shall be conservative, in compliance with these policies and the Sentencing Reform Act, and one to which the defendant will be expected to plead guilty. Normally, the initial sentencing recommendation shall be for a determinate sentence from the low end to the middle of the standard range, unless there are aggravating factors that outweigh the merits of an early plea.

Minimum recommendations shall be as follows:

- a. for a 0-60 day sentencing range, the recommendation shall be for 20 days of confinement; and
- b. for a 0-90 day sentencing range, the recommendation shall be for 30 days of confinement.

3. Deviation from Standard Range

At the time the initial sentencing recommendation is made, the filing Deputy Prosecutor and supervising deputy shall make a concerted effort to identify any aggravating and mitigating factors which would justify a deviation outside the presumptive sentencing range. At the time of initial filing, the defendant shall receive the benefit of any justifiable mitigating factors. Deviation above or below the presumptive sentencing range shall be allowed only when a reasonable and objective fact finder would find that there are

substantial and compelling reasons which justify the exception. The exception policy shall be followed if there is a deviation from the standard sentencing range. When determining whether there are sufficient aggravating or mitigating factors to recommend a sentence outside of the standard range, the Deputy Prosecutor shall consider the factors in RCW 9.94A.535 and any other relevant factors.

If the State seeks an exceptional sentence pursuant to a guilty plea, the plea offer shall give notice that the State will seek an exceptional sentence and shall note the basis for the exceptional sentence. Subsequent plea negotiations shall identify whether the defense agrees to the following:

- a. there is a sufficient basis for an exceptional sentence, up to a stated number of months;
- b. the defendant joins in the recommendation for the exceptional sentence up to that stated number of months;
- c. whether the defense agrees to limit evidence presented in the sentencing phase to stipulated documentary evidence, and
- d. whether the defendant waives the right to a jury trial to determine whether there are sufficient grounds to impose an exceptional sentence.

The guilty plea document will set forth whether the defense agrees or not to the above.

If the State seeks an exceptional sentence after trial, the jury shall determine whether the State has proven sufficient grounds to impose an exceptional sentence beyond a reasonable doubt. Blakely v. Washington, 2004 WL 1402697 (U.S. June 24, 2004); RCW 9.94A.537 (effective April 15, 2005).

4. First-Time Offenders

- a. Sentencing Range Not Exceeding 12 Months.

If there is a significant aggravating factor, the First-Time Offender Waiver normally shall not be recommended. If there is no significant aggravating factor, and the

supervision and additional conditions of a First Time Offender Waiver would benefit the victim or deter recidivism of the defendant, then the initial recommendation may be for a First-Time Offender Waiver. The initial sentence recommendation regarding confinement shall begin with what the recommendation would have been for a standard range sentence, but may be for more or less confinement as a First Time Offender sentence, based on such factors as:

- (1) agreed additional conditions imposed as part of the First Time Offender Waiver that are not available with a standard range sentence,
- (2) victim's wishes, and
- (3) factors which take the case out of the ordinary for crimes of that class.

Confinement initially recommended normally shall be converted into community restitution hours and/or partial confinement in accordance with the procedures outlined below.

b. Sentencing Range Exceeds 12 Months.

Normally, a First-Time Offender Waiver shall not be recommended when the sentencing range exceeds 12 months.

5. Alternative Conversion of Total Confinement

Offenders (including first offenders), with a sentence of one year or less, normally shall receive an initial State's recommendation for a conversion of confinement into work release, if eligible and approved by the County Department of Corrections. Such offenders also shall receive a recommendation for conversion to work crew plus electronic home monitoring, with EHM fees waived, if eligible and approved by the County Department of Corrections, subject to the limitations that follow. Work crew plus electronic home monitoring shall not be recommended for the following offenses: sex offenses, violent offenses, domestic violence offenses, offenses involving a gun, possession of methamphetamine, escape, bail jumping, or drug offenses when

there is evidence of dealing, or any other offense that is statutorily exempted. The State also will not recommend work crew plus electronic home monitoring if the offender has a prior sex, violent, escape or bail jump conviction. The exception policy shall be followed if the initial sentencing recommendation does not comply with this policy.

Normally, electronic home monitoring will not be recommended in the absence of work crew. If an exception to this policy is made, and only EHM is recommended, then the recommended conversion to electronic home monitoring should be for double the confinement time normally recommended.

For non-violent offenders, the State may also recommend that up to 30 days of confinement be converted to community restitution, if the County Department of Corrections will supervise the completion of hours. If the Department will not supervise the completion of hours, then all community restitution hours must be completed by the sentencing date to allow for such recommendation.

6. Restitution

A condition of the State's initial plea offer shall be that the defendant agree to full restitution for all crimes in the case, charged and uncharged, for which there is sufficient admissible evidence to prove the crime. See RCW 9.94A.750(5). To the extent possible, It is the filing deputy's duty to ascertain what restitution is due.

7. Other Monetary Obligations

The State's sentence recommendation shall include payment of:

- a. the Crime Victim's Compensation assessment;
- b. the biological sample fee;
- c. defense attorney costs;
- d. court costs; and
- e. other fees as applicable (e.g., Crime Lab fee, Contribution to Drug Enforcement Fund, VUCSA fine, Emergency Response to DUI costs, Domestic Violence assessment, and payment of extradition costs).

While fines are not normally recommended, they may be recommended in economic crimes and crimes for which no confinement would be recommended.

8. Community Custody

The State's sentencing recommendation normally will include the maximum period of community custody, provided the Department of Corrections is authorized to supervise it. However, when the conviction is for a drug crime for which community custody is not mandatory, and supervision of community custody is dependent on the results of a post-sentencing DOC risk assessment, the State's sentencing recommendation normally will not include community custody. This is because the risk assessment for drug crimes rarely results in the imposition of supervision.

9. Dispute over Criminal History – Effect on Sentence Recommendation

The filing deputy shall be responsible for providing the defense with the State's understanding of the defendant's criminal history at filing or as soon as possible thereafter. Any guilty plea with the State's initial sentence recommendation shall include an acceptance of the State's understanding of criminal history.

If the defense disputes criminal history, the assigned Deputy Prosecutor shall determine the nature and legitimacy of the dispute and amend the State's plea offer accordingly. For example, if there is a genuine question about whether a prior conviction exists or counts in the offender score, the Deputy Prosecutor may maintain the initial plea offer, but note what the State will recommend if the criminal history is as the defendant asserts.

Alternatively, if the dispute is not genuine but merely an attempt to avoid responsibility and to burden the State with additional expense, then the Deputy Prosecutor may revoke the initial plea offer.

In no instance may the Deputy Prosecutor agree to not allege prior convictions. RCW 9.94A.421(6).

All disputed issues as to criminal history shall be decided at the sentencing hearing. RCW 9.94A.441.

If a defendant is convicted at trial, it is the responsibility of the trial deputy to determine if criminal history will be disputed, and if so, to immediately obtain the necessary authenticated prior conviction documents for sentencing.

If a guilty plea is entered, but the criminal history is in dispute, the deputy who negotiated the agreement is ultimately responsible for obtaining the necessary authenticated prior conviction documents in advance of the sentencing hearing.

10. License Revocation

For certain offenses, including any felony in the commission of which a motor vehicle is used, the Department of Licensing will revoke the offender's driver's license when the conviction becomes final. This revocation is mandatory, and is not subject to plea negotiation. RCW 46.20.285. When license revocation is a consequence of conviction, the license revocation consequence will be noted in the guilty plea statement and in the Judgment and Sentence. The following scenarios are illustrations of felony crimes in the commission of which a motor vehicle was used:

- a. Theft or possession of the motor vehicle is an element of the crime;
- b. Driving the motor vehicle is an element of the crime, or the motor vehicle was used to transport a perpetrator to or from the crime scene; or
- c. The use of the motor vehicle contributes to the commission of the felony. Using a car to steal mail, using a car to deliver drugs, or storing drugs in the console, glove box, or trunk of a motor vehicle are all examples of the motor vehicle being sufficiently related to the commission of the felony to require revocation of the driver's license upon conviction. See, *State v. Batten*, 997 P.2d 350 (2000) (license revocation upheld when drug located in console of vehicle); *State v. Griffin*, 126 Wn. App. 700 (2005) (license revocation upheld when drugs on driver's person, and driver said he was given drugs as payment for a car ride). But see, *State v. Hearn*, 128 P.3d 139 (2006) (license revocation not supported by defendant driving van with drugs in purse and laundry basket in van.)

11. Parent Offender Sentencing Alternative (POSA)

The State shall consider recommending the Parent Offender Sentencing Alternative (POSA) only in a very limited class of cases in which a minor child will be substantially harmed if separated from the parent/defendant. The burden is on the defendant to prove eligibility for this option to include the nature and extent of the harm to a child. The POSA should only be recommended by the State if other alternatives are not viable (ex: drug court, first time offender waiver, etc.) and it is in the best interests of the child to keep the parent out of custody.

- a. The State may consider recommending the POSA in only the following types of cases: Possession of Controlled Substance, when amount is less than 10 grams; VUCSA Delivery/Possession with Intent/Solicitation/Conspiracy, when the value of the transaction is less than \$500.00 to include the value of cash seized; and property crimes when the loss is under \$10,000.00 and there are no more than two victims.
- b. The State shall not recommend the POSA when there is an aggravating circumstance as defined in RCW 9.94A.535(2), whether or not it is charged in the information.
- c. The State shall not recommend the POSA for firearm offenses, residential burglaries, felony DUI, Attempting to Elude, Escape, VUCSA involving a minor, Manufacture of methamphetamine, Third Degree Assault, or for violent, sex or domestic violence offenses.
- d. The State shall not recommend the POSA when the defendant has been sentenced on a felony charge on 3 or more occasions (i.e., the number of times the defendant has been before a court for sentencing rather than the offender score under the SRA).
- e. The State shall not recommend the POSA when the defendant has a pending case that includes a felony violent or sex offense.

- f. The State shall not recommend the POSA when the defendant has a history of domestic violence crimes or crimes against children.
- g. The State shall not recommend the POSA when the defendant has a founded complaint of child abuse or neglect.
- h. The State shall require the following proof that the defendant has physical custody of a minor: certified copy of birth certificate/adoption decree or equivalent; certified copy of parenting plan or the equivalent; and/or affidavit from school or daycare concerning custody. In addition, the DPA will contact Family Support prior to agreeing to the POSA to confirm that the defendant has no outstanding child support payments.
- i. When the State does recommend a POSA, the recommendation shall be conditioned upon the defendant agreeing to applicable conditions of community custody, such as drug/alcohol treatment, weekly UAs, parenting classes, no use of internet for computer crimes, mental health treatment, etc.
- j. Whenever the POSA is a possible sentence alternative, but the State is not agreeing to a POSA, the plea agreement shall include the defendant's agreement to not request a POSA.

9.07 CRITERIA FOR REFERRAL TO ADULT DRUG TREATMENT COURT

Adult Drug Treatment Court (ADTC) is a post-charging diversion program through which a person is held accountable for the commission of a felony without there being formal adjudication, based upon that person's voluntary entry into the program and voluntary compliance with specified conditions. The program is designed to address crimes that are caused by an underlying chemical substance addiction, to work with offenders who are amenable to change, and to assure complete restitution for victims. Entry into the program is controlled solely by the Office of the Prosecuting Attorney, based on the criteria below. The Prosecutor's Office reserves the right to deny entry into the program even when the criteria below are met, based on a review of the unique facts of the charged case, defendant's prior criminal history of concern (such as DUI or domestic violence history), the defendant's history of failing to appear for court, and other relevant

factors. A decision to deny or accept a defendant into the program may be appealed to the ADTC DPA's immediate supervisor or the Chief Criminal Deputy. Defendants make the decision to enter the program with the assistance of counsel. Upon entry into the program, the defendant must stipulate to the admissibility of police reports, which will be used to prosecute the case if the defendant is terminated from the program for unsatisfactory performance. If the defendant successfully completes the program, the charges are dismissed with prejudice.

A. Current Offenses Excluded From ADTC:

1. Violent offenses (as defined in RCW 9.94A.030) and sex offenses.
2. Firearm offenses and offenses with a firearm enhancement.
3. Offenses with a school zone enhancement.
4. Residential burglary, except when:
 - a. the residence belongs to a relative and the victim agrees to ADTC, or
 - b. the residence was obviously unoccupied and entered only for food and shelter and the victim agrees to ADTC.
5. Third Degree Assault, except when the victim and the ADTC Deputy Prosecutor agree to ADTC.
6. Manufacture of a Controlled Substance, Delivery of a Controlled Substance, and Possession with Intent to Manufacture or Deliver, except when:
 - a. the defendant is a First-Time Offender; and
 - b. the defendant is not involved in selling drugs for profit; and
 - c. the weight of the drugs possessed, delivered, or manufactured is not more than three grams, or if marijuana, not more than 30 ounces and 30 plants, or if pills, not more than 25 pills, or if Oxycontin, not more than 10 pills.
7. Manufacture of Methamphetamine, Attempted Manufacture of Methamphetamine, or Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture/Deliver are ineligible, regardless of weight.

8. Individuals who are charged with Attempting to Elude are presumed ineligible for ADTC. Attempting to Elude cases that did not involve a prolonged chase and did not involve risk to the public may be considered for ADTC on a case by case basis.
9. Domestic Violence cases are presumed ineligible for ADTC. No Contact Order Violations and some other DV cases may be considered on a case by case basis, with approval by the victim, when the incident did not involve any assaultive or threatening acts by the defendant.

B. Eligibility Requirements For Defendants

1. No more than three felony incidents referred for ADTC, other than Possession of A Controlled Substance.
2. All filed felony counts and pending uncharged felony counts must be drug-related.
3. No charged or pending uncharged felony counts that are excluded from ADTC eligibility.
4. Must not have a high number of pending uncharged felony counts.
5. Must not have over \$3000 restitution owed on referred cases. If restitution exceeds \$3000, defendant must demonstrate ability to pay down restitution prior to entry into ADTC.
6. Must be out of custody on the charged felony case, and have no other jail holds. If still in custody at the time of referral to ADTC, at first ADTC appearance, must have a verified clean and sober address where defendant can live.
7. No contested pre-trial motions have been held.
8. No prior violent felony convictions and no prior sex offense convictions.
9. Defendant must not be under a DOSA sentence or be a current participant in Mental Health Court or TAP.
10. Defendant must demonstrate a strong desire to address and overcome chemical substance addiction.

11. Initial screening and a chemical substance abuse evaluation conducted by an evaluator (ADTC Coordinator) accepted by the State that concludes the defendant has a chemical substance addiction and is an appropriate candidate for chemical dependency treatment. The assessment must address whether the defendant has any overriding mental health or medical problems that would hinder the defendant's ability to successfully complete the ADTC program.
12. Defendant is a resident of Snohomish County.
13. Cannot use prescribed mind or mood altering replacement drugs (e.g. methadone).
14. If a defendant has a case pending trial in Snohomish County, and the defendant resides in another county in Washington State which has a drug court, requests by the defendant for a change of venue to his/her county of residence so that he/she can resolve the case through that county's drug court will be considered by the trial Deputy Prosecutor on a case by case basis. It is the defendant's responsibility to first obtain agreement from the other county's prosecutor. The Snohomish County trial prosecutor will consider whether the defendant meets the above eligibility guidelines as well as the adequacy of the other county's drug court program.
15. Transfer of out-of-county cases into our ADTC are rarely accepted, and are considered by the ADTC Deputy Prosecutor on a case by case basis. It is the defendant's responsibility to first obtain agreement from the prosecutor from the other county. In addition to the eligibility factors above, the ADTC Deputy Prosecutor will consider whether the defendant already has a case in our ADTC, and will consider current drug court participant and applicant numbers.

9.08 PROCEDURES PENDING TRIAL

A. Arraignment to Entry of Omnibus Order

The Prosecutor's Office provides a complete set of discovery materials and a plea offer to the defense attorney at arraignment or as soon thereafter as possible. At arraignment, both an omnibus hearing and a trial date are set. The initial plea offer should note the potential increase in degree of crime that could be charged, or additional counts that could be added if the plea offer is not accepted prior to entry of the omnibus order. Typically, an omnibus order should not be entered unless a) the offer is accepted and the omnibus order includes a date to enter the guilty plea or b) the parties have concluded that the case is going to trial, and the omnibus order sets forth the matters upon which the parties are in agreement and sets forth a hearing schedule for the matters upon which the parties disagree. If the parties need extra time to determine whether the case is headed to plea or to trial (delay due to competency evaluation, delay due to awaiting crime lab analysis of evidence, delay due to on-going defense investigation, as examples), it may be necessary to hold open the initial plea offer and to postpone the omnibus hearing a reasonable period of time. An unreasonable delay by the defense in complying with its obligation to provide discovery to the State should be addressed by revocation of the initial plea offer and a motion to compel discovery.

B. Revocation of Initial Plea Offer

Upon revocation of the initial plea offer, the prosecutor should give prompt notice to the defense of whether additional counts will be added for trial, and what additional penalties will be sought upon conviction. The defense shall be given notice of any additional counts to be added sufficiently in advance of the trial date so that the defense does not have to choose between being prepared for trial and the right to a speedy trial. See, State v. Michieli, 132 Wn.2d 229 (1997). Additional counts may be charged only if they are necessary to ensure that the charges: (1) will significantly enhance the strength of the State's case at trial, or (2) will result in restitution to all victims. Additional offenses shall not be charged to punish the defendant for choosing to go to trial. State v. Korum (Div. II, filed 3/15/04).

If the defendant decides to plead guilty after the initial plea offer has been revoked, the State's plea offer normally will be for more counts and/or

more confinement time than the initial plea offer. It is the trial Deputy Prosecutor's responsibility to prepare the post-omnibus plea offer, in compliance with the Sentencing Reform Act and these Standards. Any exception to standards, including returning to the initial plea offer, shall follow the exception policy. In high-profile cases, any exception to the standards in the post-omnibus plea offer shall be approved by an the Chief Criminal Deputy or the Prosecuting Attorney.

9.09 EXCEPTIONS TO STANDARDS

A. Procedure

Exceptions to these policies may be made in any case, but must be supported in writing. The assigned Deputy Prosecutor shall outline the reasons for the exception in writing, sign the document, and include it in the file. The exception is not allowed until the appropriate level supervisor also signs the form.

1. Death Penalty cases: The elected Prosecuting Attorney has sole authority to approve an exception to standards in death penalty cases.
2. High-profile cases: The Chief Criminal Deputy may approve an exception to standards in high-profile cases.
3. All other cases: The supervising deputies have authority to authorize exceptions to these policies in all other cases.

B. Dismissal of Charges

The presence of factors which would justify declining to file a case may justify the decision to dismiss a prosecution which has been commenced. When there is a conflict between the general provisions and the specific crime section on dismissal, the specific crime section shall be controlling.

C. Charge Reduction

Although a defendant will normally be expected to plead guilty to the degree of charge and number of counts filed or go to trial, in certain circumstances, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his/her criminal conduct may be necessary and in the public interest. Such situations may include the following:

1. Evidentiary problems which were not recognized at the time of filing and which make conviction on the original charges doubtful;
2. The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;
3. A written request by the victim when it is not the result of pressure from the defendant;
4. The discovery of facts which mitigate the seriousness of the defendant's conduct;
5. The correction of errors in the initial charging decision;
6. The defendant's history with respect to criminal activity;
7. The nature and seriousness of the offense or offenses charged; or
8. The probable effect on witnesses.

RCW 9.94A.450

Caseload pressures or the cost of prosecution may not otherwise normally be considered.

When there is a conflict between this general provision and the specific crime section, the specific crime section is controlling.

D. Deviation from Standard Sentence Recommendation

1. Exceptional Sentence Up or Down

An exceptional sentence either above or below the standard range must be supported by substantial and compelling reasons, and the court must set forth the reasons in written findings and conclusions of law. RCW 9.94A.535.

The sentencing judge decides whether the preponderance of the evidence establishes that there are *mitigating* circumstances that justify a sentence *below* the standard range. An illustrative list of mitigating circumstances is provided in RCW 9.94A.535.

The sentencing judge can impose a sentence *above* the range based on *aggravating* circumstances only if:

- a) the prosecutor gives notice prior to trial or entry of the guilty plea that the State is seeking an exceptional sentence up and the aggravating circumstances upon which it is relying; and
- b) the parties stipulate to aggravating circumstances that justify an exceptional sentence above the range; or
- c) the aggravating circumstance concerns the defendant's prior criminal history as described in RCW 9.94A.535(2)(b), (c) or (d), and the sentencing judge finds substantial and compelling reasons to sentence above the standard range; or
- d) the aggravating circumstance is one or more of those listed in RCW 9.94A.535(3), and a jury unanimously finds that the aggravating circumstance(s) has/have been proven beyond a reasonable doubt.

2. Conviction of Lesser Crime

If the defendant goes to trial and is convicted of a lesser offense, normally the State's sentence recommendation shall be proportionate to the seriousness of the crime(s) for which the defendant was convicted and the defendant's criminal history, as well as any aggravating and/or mitigating factors.

3. Alternative Conversion

Under RCW 9.94A.680, for sentences of nonviolent offenders for one year or less, the court shall consider and give priority to alternatives to total confinement and shall state its reasons if they are not used. Therefore, in addition to following the above-stated exception policy, the deputy who proposes not to use alternatives to total confinement for nonviolent offenders qualifying for alternate conversions shall justify that decision with reasons stated on the State's sentence recommendation form.

9.10 CASES NOT COVERED BY POLICIES

- A. Cases involving crimes not covered by these Standards shall be filed and handled in such a manner as to carry out the general principles inherent in these policies and the Sentencing Reform Act. For guidance in determining the appropriate method of filing and disposition, reference should be made to these policies for crimes analogous in seriousness and impact upon the community.
- B. For crimes committed prior to the effective date of the Sentencing Reform Act, the filing and disposition policies previously in effect shall apply.

9.11 VIOLENT CRIMES

A. Homicide

1. Evidentiary Sufficiency

The evidentiary standard for Crimes Against Persons shall be used, Standard 2.00(B)(1). See also the Deadly Weapon Allegation Standard 9.05.

Aggravated Murder in the First Degree. Aggravated murder shall be filed when the Prosecuting Attorney (or in his/her absence the Chief Criminal Deputy) is satisfied to a high degree of certainty that substantial evidence exists to establish that the homicide was in fact premeditated and substantial evidence exists to establish an aggravating factor per RCW 10.95.020.

If it is decided that the aggravating factor shall be filed, preferably it will be filed at the same time as the first degree murder charge.

2. Number of Counts

Initially, one count for each homicide and one count for each other crime meeting the evidentiary standard shall be filed, up to the number of counts necessary for the offender score to reach the “9 or more” category for the offense with the highest standard range. For example, six (6) counts of manslaughter in the second degree (separate and distinct criminal conduct) would be the maximum number of counts filed because additional counts filed after the first one are counted as current offenses worth 2 points and the “9 or more” category is reached if 6 counts are alleged.

3. Death Penalty Decision Procedures

When a filing deputy becomes aware of a potential aggravated murder case, i.e., there is some evidence of premeditation and an aggravating factor, the filing deputy shall immediately notify the Chief Deputy and the Prosecuting Attorney. No deputy prosecuting attorney is authorized to file a Notice of Special [Death Penalty] Sentencing Proceeding without the prior approval of the Prosecuting Attorney, or in his/her absence, the prior approval of the Chief Criminal Deputy Prosecutor.

Whenever aggravated murder in the first degree charges are filed, the assigned Deputy Prosecutor shall prepare a death penalty report containing the following information, which shall be made part of the file:

- a. case status;
- b. statement of facts;
- c. case problems and solutions;
- d. aggravating factors and any proof problems;
- e. mitigating factors existing under RCW 10.95.040(1);
- f. other mitigating factors;
- g. prior convictions;
- h. wishes of the victim's family; and
- i. any other significant factors.

The assigned deputy shall request defense counsel to submit mitigating material forthwith, and the deputy shall note in the file the date of the request. The deputy shall keep a record of any verbal communications with defense counsel, as well as any written correspondence regarding this request.

Copies of the death penalty report and the defense mitigation materials shall be distributed to the Prosecuting Attorney, the Chief Criminal Deputy, the Assistant Chief Criminal Deputies, all senior deputies, and all deputies assigned to the case for review prior to attending a death penalty conference. These copies shall be held

confidential and returned to the assigned deputy at the end of the conference for destruction.

The Prosecuting Attorney shall hold a death penalty conference to consult with the assigned deputy, the Chief, Assistant Chief, all available senior deputies, the assigned PA victim advocate if available, and representatives of the police agency responsible for the investigation.

Only the Prosecuting Attorney has authority to decide whether the death penalty will be sought. The decision shall be in writing and filed in the case file. The Prosecuting Attorney will meet with the victim's representatives to explain the decision, whenever possible, prior to public announcement of the decision.

The Notice of Special [death penalty] Sentencing Proceeding shall be served on the defendant in open court and filed in open court in accordance with RCW 10.95.040 when the Prosecuting Attorney has personally decided that there is not sufficient evidence of mitigation to warrant less than the death penalty. In the absence of the Prosecuting Attorney, the decision may be made by the Chief Criminal Deputy.

B. Assault

1. Evidentiary Sufficiency

The evidentiary standard for Crimes against Persons shall be used, Standard 2.00(B)(1). See also the Deadly Weapon Allegation Standard 9.05. The Deputy Prosecutor shall take reasonable steps to interview the victim prior to the charging decision, and when that is not possible, as soon thereafter as possible.

2. Charge Selection

a. Assault in the First Degree, RCW 9A.36.010

b. Assault in the Second Degree, RCW 9A.36.020

Assault with intent to commit a felony charges shall be limited to situations when the assault is not an integral part of the underlying felony.

c. Assault in the Third Degree, RCW 9A.36.030

i. Negligently inflict bodily harm with weapon

Assaults based upon a “negligence” theory normally shall not be filed unless significant physical injury has resulted. The evidence must support a finding that the defendant exercised gross negligence.

ii. Against Transit Drivers

Assaults against transit drivers shall be charged if the assault:

(a) resulted in an identifiable injury; or

(b) involved the use of any object, not amounting to a deadly weapon; or

(c) occurred while the bus was actually moving and thereby created a likelihood of an accident.

Assaults against transit drivers involving weapons or where substantial bodily harm results should normally be filed as Second Degree Assault.

iii. Against Law Enforcement Officers

Police officers are called upon to perform a difficult job under the best of circumstances. Their ability to use low levels of force to maintain the peace is compromised when individuals disobey, resist, or assault officers. Thus, in an effort to promote respect for the enforcement community that is commensurate with that shown to other criminal justice system participants (such as judges and Deputy Prosecutors), assaults against police officers shall be aggressively prosecuted. For charging purposes, actual physical injury is not required, only the potential for same. (Truly *de minimis* kinds of assaults are more appropriately charged as Fourth Degree Assault or Resisting Arrest. Examples of *de minimis* assaults include spitting at an officer (other than on the face),

swing-and-miss assaults, and drunken thrashing-about assaults that result in no injury.)

All third degree assault referrals with a police officer as victim should be reviewed by the officer's supervisor before referral to the Prosecutor's Office, to ensure that the referral meets this standard and contains the necessary investigative information.

The police officer victim shall meet with the assigned prosecutor prior to the charging decision. Failure to take reasonable steps to meet with the Deputy Prosecutor may result in the defendant being offered a plea to Fourth Degree Assault. If the police officer victim and/or the officer's agency disagrees with the charging decision, the review process outlined in 2.08(C) above may be used. Alternatively, if the chief of the police agency personally reviewed and approved the case for referral, the chief may contact the Chief Criminal Deputy or the Prosecutor directly for review of the charging decision

C. Kidnapping

1. Evidentiary Sufficiency

The applicable standard, 2.00(B)(1) or 2.00(B)(2), shall be used. See also the Deadly Weapon Allegation Standard 9.05. The Deputy Prosecutor shall take reasonable steps to interview the victim prior to the charging decision, and when that is not possible, as soon thereafter as possible.

2. Charge Selection

a. Kidnapping in the First Degree, RCW 9A.40.020

Kidnapping in the First Degree shall not be filed unless the abduction involves an actual or planned substantial transportation of the victim from the scene of the original restraint, in addition to the statutory aggravating factor.

b. Kidnapping in the Second Degree, RCW 9A.40.030

All kidnappings in which an aggravating factor is not present, but in which the abduction involved a substantial transportation from the scene of the original restraint, shall be filed as kidnapping in the second degree.

c. Unlawful Imprisonment, RCW 9A.40.040

Unlawful imprisonment shall not be filed unless the restraint is substantial, either as to the degree of force used or as to the time involved. Momentary restraints shall be filed as the appropriate degree of assault or as an attempt to commit the intended crime.

d. Custodial Interference in the First Degree, RCW 9A.40.060

Charges of Custodial Interference in the First Degree shall only be filed if there is sufficient evidence of the requisite intent, an aggravating factor, and a lawful right to physical custody/time has been awarded to the other person or agency whose custody/time is being interfered with and the defendant has been given actual notice of the custody determination/parenting plan. Protracted period is not defined in the statute, and will depend on the circumstances. A weekend may constitute a "protracted period" for a 14-month-old child. *State v. Cline*, __ Wn. App. __ (COA No. 44026-1-II, 22 April 2014). Any decision to charge Custodial Interference shall consider whatever evidence is available to support the statutory defenses to the crime under RCW 9A.40.080.

e. Custodial Interference in the Second Degree, RCW 9A.40.070

Custodial interference in the Second Degree shall only be filed if there is sufficient evidence of the requisite intent, and a lawful right to physical custody/time with the child has been awarded to the other person or agency whose custody/time is being interfered with and the defendant has been given actual notice of the custody determination/parenting plan. The class C felony of Custodial Interference in the Second Degree shall only be filed if the prior custodial interference conviction is constitutionally valid. Any decision to charge Custodial

Interference shall consider whatever evidence is available to support the statutory defenses to the crime under RCW 9A.40.080.

3. Relation to Other Crimes

A kidnapping count should not be added to other crimes arising from a single criminal episode unless the abduction of the victim extended beyond what is necessary in either time or distance to commit the underlying crime.

4. Disposition

Custodial Interference cases

The Deputy Prosecutor shall seek an assessment of the reasonable expenses incurred in locating or returning a child or incompetent person pursuant to RCW 9A.40.080.

D. Robbery

1. Evidentiary Sufficiency

The evidentiary standard for Crimes against Persons shall be used, Standard 2.00(B)(1). See also the Deadly Weapon Allegation Standard 9.05. The Deputy Prosecutor shall take reasonable steps to interview the victim before the charging decision, and when that is not possible, as soon thereafter as possible.

2. Charge Selection

Robbery in the First Degree, RCW 9A.56.200

a. Displays What Appears to be a Deadly Weapon

Robbery in the first degree, based upon a “display what appears to be” theory ordinarily should not be filed unless the “weapon” was actually visible to the victim. A finger in the pocket should be charged as robbery in the second degree.

b. Bodily injury

Robbery in the first degree, based upon a “bodily injury” theory ordinarily should not be filed unless the injury is sufficiently serious enough to require more than first aid.

c. Purse Snatchings

- (i) If such crimes do not involve significant physical contact, they should be charged as first degree theft.

Robbery in the Second Degree, RCW 9A.56.210

All other robbery cases, including those involving feigned weapons and minor injuries, shall be filed as robbery in the second degree.

3. Dismissal of Counts

Counts representing separate victims within the same incident may be dismissed in return for a plea of guilty to one count for each separate incident, if the information is amended to allege each victim by name in one count to which the plea of guilty will be entered.

9.12 DOMESTIC VIOLENCE CRIMES

A. Evidentiary Sufficiency

See evidentiary standard 2.00(B) and the Deadly Weapon Allegation standard 9.05.

The Deputy Prosecutor shall take reasonable steps to interview the victim(s) prior to the charging decision and when that is not possible, as soon thereafter as possible. Even when the victim initially is cooperative with prosecution, due to the high incidence of recantation, upon first review the Deputy Prosecutor shall seek other forms of evidence, such as eyewitness statements (including from any competent children present), officer observations, documentation of injury or lack thereof, Smith affidavits, excited utterances (including 911 calls), defendant's statements, and when relevant to the particular crime, past history of domestic violence and of no contact orders. The fact that a victim does not desire prosecution is not by itself reason to decline, although it is often the case that there will be insufficient evidence to proceed without the cooperation of the victim. The victim's wishes, and the effect of the victim's position on the viability of the case, shall be considered in the charging decision, as well as whether children have been witnesses or recipients of the domestic violence, the history and extent of domestic violence, the severity of injury to the victim, the use of weapons, and whether the defendant has engaged in controlling behavior or stalking.

B. Charge Selection

1. Felony Domestic Violence Court Order Violation, RCW 26.50.110

When the victim initiated, invited, permitted or acquiesced to the court order violation, the case shall be treated as a misdemeanor domestic court order violation, unless:

- a. the victim was assaulted during the contact and sustained significant bodily harm; or
- b. the offender has a history of repeatedly violating no contact orders; or
- c. other extraordinary circumstances exist to justify deviation from this standard.

Any prosecution for a domestic violence court order violation requires proof that the defendant knew of the order. Before filing a felony charge of domestic violence court order violation in Superior Court, the Deputy Prosecutor shall obtain proof sufficient to establish knowledge, such as a copy of the order with the defendant's signature, proof of service of the order on the defendant, or an admission from the defendant that he/she knew of the order.

Any prosecution for a domestic violence court order violation requires sufficient credible, admissible evidence that the contact took place.

- a. To charge a felony domestic violence court order violation on a theory of two previous convictions, there must be proof that the two previous convictions were constitutionally valid (was represented by counsel or waived the right to counsel). Third time court order violations, for which there is no visible injury to the victim, may be expedited to misdemeanor domestic violence court order violation, if the defendant is otherwise eligible for an expedited.
- b. To charge a felony domestic violence court order violation on a theory of assault, there must sufficient credible, admissible evidence that an assault occurred and that the assault was not in self-defense.

2. Felony Harassment, RCW 9A.46.020

- a. To charge felony harassment on a “threat to kill” theory, the threat must be specific, and there must be evidence that the victim had a reasonable belief that the defendant would carry out the threat to kill. A reasonable belief that the defendant would merely harm the victim rather than kill the victim is not sufficient for the crime of felony Harassment. State v. C.G., 150 Wn.2d 604 (2003). Evidence to show that the victim reasonably believed the defendant would carry out the threat to kill may include what the victim knows of the defendant’s history of violence, the defendant’s access to weapons, the defendant’s use of weapons in the past, and other circumstances known to the victim surrounding the threat. Other evidence to establish that the victim reasonably believed the threat may be the victim’s immediate actions and excited utterances upon learning of the threat. The target of the threat must know of the threat, but there need not be evidence that the defendant knew the threat had been communicated to the target. State v. J.M., 144 Wn.2d 472 (2001).
- b. To charge felony harassment on a previous conviction theory, there must be proof that the previous conviction was constitutionally valid (was represented by counsel or waived the right to counsel).

3. Telephone Harassment, RCW 9.61.230 and Cyber stalking, RCW 9.61.260.

4. Stalking, RCW 9A.46.110

5. Strangulation or Suffocation

Strangulation can become deadly force within a matter of 4 to 5 minutes. Yet strangulation, even to the point of unconsciousness, can result in no permanent harm. Whether strangulation, which does not result in death, may support a charge of Attempted Murder or First or Second Degree Assault must be decided on a case-by-case basis. The Deputy Prosecutor should assess whether the requisite intent and the requisite degree of injury can be proved.

Factors to consider include, but are not limited to:

- a. whether the victim has provided a statement about the incident
- b. whether the victim is cooperative with prosecution;
- c. whether medical attention was sought and injuries were documented, such as an injured larynx, visible bruises to the neck, petecchia, scleral hemorrhage (bleeding on the eyeball) or petecchia/injury inside the lip;
- d. defendant's statements;
- e. expert medical opinion that the requisite degree of injury occurred;
- f. whether weapons were used; and
- g. whether the evidence supports strangulation beyond loss of consciousness.

6. Assault by Threat to Use A Weapon

Domestic violence cases in which the defendant held a deadly weapon shall not be filed as First or Second Degree Assault unless there is clear evidence that the defendant wielded the weapon with the requisite intent.

7. Burglary

Burglary shall not be charged when the evidence is not clear whether the defendant had permission to enter, such as in an on-again-off-again live-in relationship where the defendant's belongings are in the victim's dwelling. Factors to consider are:

- a. the degree of force and manner in which the defendant entered;
- b. the last permitted entry; and
- c. whether the victim specifically revoked permission to enter.

When it is clear that the defendant did not have permission to enter, the defendant was not armed with a deadly weapon, and the crime committed therein was Fourth Degree Assault, the Deputy

Prosecutor initially may charge Residential Burglary or Second Degree Burglary.

C. Charge Reduction/Dismissal

When a charge cannot be proved without the testimony of the victim, and the victim is uncooperative, the Deputy Prosecutor may request a material witness warrant for the victim with the supervisor's approval. Because it is not the Prosecuting Attorney's intent to punish the victim but to keep the victim safe, a material witness warrant shall be sought only as a last resort and will not be sought in all such cases. The decision to request a material witness warrant will be made based on the following factors:

1. the seriousness of assault and/or degree of injury to the victim;
2. the history and nature of domestic violence between the parties, particularly whether the physical violence has escalated in severity;
3. whether children have witnessed or have been recipients of the domestic violence;
4. whether the defendant used a weapon or made threats to kill;
5. whether the victim's withdrawal of cooperation is the result of fear or coercion;
6. whether the defendant continues to exert control over the victim or continues to threaten the safety of the victim and/or children; and
7. whether the defendant has access to firearms.

D. Sentence Recommendation

1. No Contact Order

Generally, the Deputy Prosecutor shall recommend a no contact order. When the victim and defendant have children in common, and the children are not victims of the domestic violence, then the no contact order may state that it may be modified by future court order to accommodate child visitation.

2. Domestic Violence Perpetrator's Treatment

The law authorizes imposition of domestic violence perpetrator's treatment when community custody is imposed on felony convictions. RCW 9.94A.505(11); RCW 9.94A.545 and 9.94A.715. The law also authorizes imposition of domestic violence treatment as a condition of probation on misdemeanor convictions.

Domestic violence victims sometimes want the perpetrator to "get help" or complete treatment, and sometimes condition their cooperation with prosecution on the prosecutor making a recommendation of treatment as a part of the sentence. The victim will be informed whether the prosecutor will seek treatment as a condition of the sentence, and have an opportunity to address the sentencing court about treatment, if it is not part of the prosecutor's sentence recommendation. Proponents of treatment argue that treatment as part of a package of probation conditions can be effective. Current research indicates that the Duluth Model of treatment has no demonstrated effect on reducing domestic violence recidivism. Recommending treatment as part of a domestic violence felony sentence is an exception to these standards that must be approved by the Lead DV DPA. It will only be recommended in conjunction with community custody supervision or with the court's agreement to set supervision hearings to monitor the successful completion of the treatment program, and when the treatment program is administered by a State-approved agency.

E. Post-Sentencing Review

Victim requests to withdraw the no contact order.

The Deputy Prosecutor shall oppose victim requests to withdraw no contact orders, unless the following is shown:

1. the defendant is in compliance with the conditions of his/her sentence;
2. if treatment was ordered, the defendant has successfully completed treatment;
3. the victim has completed victim counseling and has a safety plan;

4. the defendant's counselor, the victim's counselor, and if there are children, the children's counselor all recommend that the order be lifted; and
5. the community corrections officer, if there is one, recommends that the order be lifted.

F. TAP and Domestic Violence Cases

Most felony incidents of domestic violence represent a continuing pattern of domestic violence, and it is difficult to assess the likelihood of the risk to re-offend. Because research on recidivism of domestic violence perpetrators and on the efficacy of domestic violence treatment is incomplete, and because the paramount concerns of the Deputy Prosecutor are minimizing the risk of re-offense and enhancing the safety of the victim, the Deputy Prosecutor rarely will refer a felony domestic violence case to TAP.

For felony domestic violence cases, in addition to the eligibility criteria for referral to TAP listed in Standard 9.03, the following criteria must be met:

1. The perpetrator and the victim will have no regular contact in the future because their relationship is over, or the perpetrator and the victim are in a committed relationship with no prior pattern of abuse before this incident.
2. The offense was either an isolated event or a recently commenced pattern and was brought on by a specific identifiable stressor. The offense cannot be an escalation of prior violence.
3. The stressor cannot have been the use of alcohol or illegal drugs.
4. No firearm was used.
5. The victim expresses a preference that the case be handled by TAP.
6. The perpetrator has no prior victims.

G. Adult Drug Treatment Court and Domestic Violence Cases

Drug court is not designed to address criminal behavior that involves harm or the threat of harm to persons, nor to monitor individuals who have the potential to harm persons in the future. Therefore, most felony domestic violence cases are not appropriate for Drug Court. Nevertheless, there may be some cases labeled Domestic Violence because of the relationship of the suspect and the victim, which involve damage to property or theft of property, but no harm or threat of harm to persons. These cases may be considered for Drug Court.

For felony domestic violence cases, in addition to the general eligibility criteria for Drug Court, the following criteria must be met:

1. The incident does not involve harm or the threat of harm to a person. Damaging property in the presence of a person can be a threat of harm to that person.
2. The perpetrator has no prior conviction for a domestic violence offense, whether misdemeanor or felony.
3. The perpetrator has no prior history of violence, whether domestic or not, regardless of whether the history resulted in any conviction.
4. The perpetrator has no pending matters which are crimes of domestic violence, whether misdemeanor or felony.
5. The victim has no objection to the case being sent to Drug Court.

Procedure for referral to Drug Court:

The Deputy Prosecutor shall obtain approval from the supervising attorney before referring any case to the Drug Court Deputy Prosecutor. The Drug Court Deputy Prosecutor shall approve the referral before the matter is set for a Drug Court hearing.

9.13 SPECIAL ASSAULT CRIMES

A. Evidentiary Sufficiency

See evidentiary standard 2.00(B), the Deadly Weapon Allegation standard 9.05, the multiple incidents of crime standard 2.01, and the Persistent Offender standard 9.17.

The Special Assault Unit is assigned felony crimes of (non-D.V.) sexual assault upon adult victims, child sexual and physical abuse and elder physical abuse cases. Due to the sensitive nature of these crimes, each case is assigned to one Deputy Prosecutor for vertical prosecution, from initial review through disposition, whenever possible. The Deputy Prosecutor shall take reasonable steps to interview the victim and/or the victim's custodian prior to the charging decision and when that is not possible, as soon thereafter as possible. Generally, within 100 days of the case being assigned to the Deputy Prosecutor, the Deputy Prosecutor shall either:

1. charge the case,
2. decline the case, or
3. request needed follow-up investigation.

The fact that a victim does not desire prosecution is not by itself reason to decline, although it is often the case that there will be insufficient evidence to proceed without the cooperation of the victim. Because proceeding with prosecution can be a hardship for the victim in special assault cases, the Deputy Prosecutor shall give significant consideration to the victim's wishes in deciding whether to prosecute, and what to charge. Other factors to consider are:

1. the effect of the victim's cooperation on the viability of the case;
2. the nature and seriousness of the crime;
3. the severity of injury to the victim;
4. whether weapons were used or threatened, or threats to kill were made;
5. whether there are other victims;
6. the medical and psychological evidence available;

7. the availability of other admissible evidence;
8. whether the defendant has a predatory history; and
9. whether there is any corroboration of the victim's testimony.

Part of the charging decision in cases involving sexual contact with a child or physical abuse of a child amounting to substantial bodily harm is assessing the admissibility of out-of-court statements made by children under 10 years of age about such abuse. The Deputy Prosecutor shall assess the admissibility of such statements, under the criteria set forth in RCW 9A.44.120. In addition, when evaluating the sufficiency of the evidence, the Deputy Prosecutor shall assess the likelihood of the child not testifying, and whether the statements will be deemed to be testimonial. See, Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

B. Charge Selection

1. First Degree Rape, RCW 9A.44.040
 - a. Deadly Weapon - Rape in the first degree ordinarily should not be filed unless the weapon is actually visible to the victim or a weapon is recovered from the defendant.
 - b. Kidnapping - Rape in the first degree ordinarily should not be filed unless the victim is transported an appreciable distance or restrained for a period of time longer than necessary to commit the rape.
 - c. Display - Rape in the first degree, based upon a displaying of what appears to be a weapon theory, ordinarily should not be filed unless the apparent weapon is actually visible to the victim or was placed in contact with the victim.
 - d. Serious Physical Injury - Rape in the first degree based upon serious physical injury ordinarily should not be filed unless the injury is sufficient to require medical treatment more serious than first aid.
 - e. Feloniously Enters - This refers to buildings and to motor homes and boats with permanent sleeping or cooking facilities. See RCW 9A.52.095.

2. Second Degree Rape, RCW 9A.44.050

- a. Rapes involving forcible compulsion, but not one of the aggravating factors set forth in 9A.44.040, shall be charged as rape in the second degree. "Forcible compulsion," for purposes of these Standards, means physical force beyond the minimal restraint inherent in commission of the act or when there were explicit threats of harm.
- b. Rape in the second degree, based upon physical helplessness or mental incapacity, should not be filed unless the condition was readily apparent to a reasonable person, or when there is clear evidence that the defendant drugged the victim or otherwise engaged in a purposeful act to render the victim physically or mentally incapable of giving consent.

3. Third Degree Rape, RCW 9A.44.060

Rape in the third degree should be filed when:

- a. there was no explicit threat of harm; or
- b. there was no physical force beyond the restraint inherent in the commission of the act; but
- c. non-consent was made manifest in a manner that would be clear to a reasonable person in the circumstances of the defendant.

4. Indecent Liberties

5. Child Rape and Child Molestation

Cases involving sexual intercourse shall be filed as the correct degree of rape, provided that it may be appropriate to file child molestation if proof of penetration is questionable.

In a case involving multiple incidents of sexual abuse, it may be appropriate for the initial filing to limit the number of counts such that the standard range includes a period of confinement less than 11 years, in order to maintain SSOSA eligibility, even if the Deputy Prosecutor does not plan on recommending a SSOSA.

Factors to consider when choosing the number of counts to file include:

- a. the sufficiency of the evidence as to each count;
- b. the number of victims involved; and
- c. the gravity of each incident.

6. Child Rape/Molestation and Incest

Generally, cases chargeable as First or Second Child Rape/Molestation, or as Incest, should be filed as the appropriate degree of Child Rape or Child Molestation. Generally, cases chargeable as Third Degree Child Rape/Molestation, or as Incest, should be filed as the appropriate degree of Child Rape/Molestation. Incest generally implies consent while rape/molest implies victimization. Incest 1 is a strike when the victim is under 15.

7. Sexual Misconduct with a Minor

8. Internet Crimes Against Children (ICAC).

The typical referral is based on a police sting operation, in which a detective will post a profile pretending to be a child. The suspect initiates a conversation based upon the posted profile of the detective. The less typical referral is based on sexually explicit chats with real children, or with adult private citizens purporting to be children.

If the communication is via the Internet, and the suspect engages in chat with a person the suspect believes to be under 18, and the chat is sexually explicit, but the suspect does not take a substantial step toward meeting the child, ordinarily a charge of Communication with a Minor for Immoral Purposes will be filed. That crime is a felony if committed by electronic means. If the suspect has chatted with multiple children/adults purporting to be children, the number of counts filed will depend on such factors as the number of children/adults purporting to be children with whom the suspect communicated; the number, length, predatory content and time span of illicit communication with each person; the availability of those persons for trial; and whether the suspect has a prior sex offense history. If the suspect is within the age range for

which sexual contact with the person would be legal, no charge will be filed. If the suspect is just outside the age range in which sexual contact with the person would be legal (for example, a 19-year-old communicating with a 15-year-old), the initial charge should be a gross misdemeanor Communication with a Minor for Immoral Purposes. An isolated or vague sexual remark made over the Internet to a person the suspect believed to be under 18, with no attempt to follow up with additional sexual communication and no attempt to meet the child, may be declined for felony prosecution.

If the chat progresses to the point where the suspect arranges to meet with the child/adult purporting to be a child for a sexual encounter, and the suspect arrives at the appointed time and place but is arrested before any sexual contact with a child takes place, ordinarily a charge of Attempted Child Molestation or Attempted Rape of a Child will be filed. Factors indicating whether a charge of Attempted Rape of a Child is appropriate include the suspect's statements or admissions of intent to engage in sexual intercourse; what items, if any, the defendant has in his possession at the time of his arrest (for example, condoms, lotions, items typically used for bondage, or sex toys); the defendant's selection of a place to meet (for example, motel room versus a public place); and any other circumstances indicating that the intent to engage in sexual intercourse was not abandoned prior to the suspect knowing the police were about to arrest the suspect. Factors that may indicate a charge of Attempted Child Molestation should be filed instead include 1) brief communication and minimal planning for the meet; 2) a suspect whose age is just outside the age range in which sexual contact would be legal; or, 3) after apprehension and the obtaining of a sexual deviancy evaluation done by an evaluator approved by the State, a finding that the suspect is a good candidate for treatment, does not have a history of similar offenses, and the suspect has promptly entered into sexual deviancy treatment with a treatment provider approved by the State.

For all felony plea agreements, the State will request that the suspect complete a sexual deviancy evaluation performed by an evaluator acceptable to the State and agree to complete any recommended treatment with a certified sexual deviancy treatment provider. When the standard sentence range spans jail confinement to prison confinement, the initial sentence

recommendation will generally be for prison, in order to obtain the longer community custody period of 36 to 48 months, so that meaningful treatment can take place. Aggravating factors such as prior sex offense history, or the possession of implements commonly utilized for sadistic sex or bondage, will justify more rather than fewer counts, or a sentence recommendation higher than ordinarily recommended.

9. Voyeurism
10. Child Pornography
11. Failure to Register

The first felony offense is unranked and requires up to 12 months of community custody. The second and subsequent felony offenses are Level 2 offenses, require 36 months of community custody, and are classified as sex offenses. The first and second offenses are Class C felonies. The third and subsequent offenses are Class B felonies.

Normally a minimum 30 day recommendation (with alternatives) is made on the first felony FTR offense unless the defendant qualifies for a reduction to attempted FTR. To qualify for an attempted FTR a defendant must be a Level 1 offender and may not have a previous FTR conviction. He must not have been actively attempting to avoid community notification. An example of avoiding notification would be if he was also in escape status with DOC or was clearly residing in an apartment complex that would not have allowed his presence if he had been properly registered. In addition, the period of noncompliance cannot be an extended period. If the underlying offense is a relatively old juvenile conviction, an obstructing may be considered instead of Attempted FTR, since it allows the offender to petition to obtain relief from the duty to register, if it appears that the defendant has met the other statutory requirements to petition for relief.

The second felony FTR conviction carries a minimum of 12+-14 months in prison, due to the multiplier on the underlying sex conviction. The maximum is 43-57 months. Since the second offense has a statutory maximum of 5 years, offenders with higher scores will not qualify for the full amount of community custody. If the second failure to register does not appear to be

for an extended period, it may be appropriate for a downward departure from the guidelines, on Level 1 offenders, if the defendant is no longer on community custody on the underlying offense. This would allow for the full amount of community custody. Additional evaluations and treatment may also be appropriate as a condition of community custody on these cases.

If the failure to register was for a very short period and there has been substantial compliance, a departure from the guidelines may be appropriate on second or subsequent offenses.

12. Murder, Manslaughter, and Homicide by Abuse
13. Assault of a Child
14. Criminal Mistreatment
15. Abandonment of a Dependent Person

C. Disposition

1. Restitution

The Deputy Prosecutor shall recommend that the defendant be responsible for counseling costs and medical costs reasonably related to the crime.

2. Special Sexual Offender Sentencing Alternative (SSOSA)

a. Statutory Requirements, RCW 9.94A.670(2)

- (1) The defendant's current crime(s) cannot be either second degree rape or a serious violent sex offense, and if conviction by guilty plea, the defendant must affirmatively admit all elements of the crime(s).
- (2) The defendant cannot have any prior convictions for sex offenses.
- (3) For an offense committed on or after 7/1/05, the defendant cannot have any prior conviction for a violent offense within 5 years prior to the new offense.
- (4) The standard sentence range includes the possibility of confinement for less than 132 months (11 years).

- (5) The court may consider an expert's report whether the defendant is amenable to treatment and the relative risk to the community, the victim, and persons of similar age and circumstances as the victim. See RCW 9.94A.670(3) for report requirements.
- (6) The court shall give great weight to the victim's opinion whether the defendant should receive a SSOSA. If the court grants the SSOSA over the victim's objection, the court shall provide written reasons for overriding the victim's opposition and finding that the SSOSA is not too lenient.
- (7) For a current offense committed on or after 7/1/05, the current offense did not result in substantial bodily harm to the victim.
- (8) For a current offense committed on or after 7/1/05, the defendant must have had some relationship with the victim, i.e., not a stranger to the victim.
- (9) For offenses committed as of 6/7/06, the court must impose confinement up to 12 months, or the maximum term within the standard range, whichever is less. The court may order more than 12 months confinement or the maximum term within the range based on aggravators, but not more than the statutory maximum sentence for the offense.

b. Additional Requirements

The Deputy Prosecutor shall not agree to a SSOSA unless:

- (1) The current crime was not aggravated by use of a weapon or physical injury to the victim or sadistic behavior.
- (2) A certified sex offender treatment provider has determined that the defendant is amenable to treatment, an acceptable treatment plan has been formulated, and a certified sex offender treatment provider deemed acceptable to the State has been proposed.

- (3) The defendant does not have a history of escapes or failures to appear.
- (4) The defendant admits the offense and expresses his/her willingness to participate in the program. If the defendant is allowed to have a judge determine guilt based on a stipulation to documentary evidence, that evidence must include a confession to all elements of the crime(s).
- (5) The defendant is not a poor risk for community supervision and outpatient treatment.
- (6) The deputy has consulted with the victim and/or victim's family regarding this option.

c. Standard sentence recommendations for SSOSA

- (1) The recommended prison term imposed, but then suspended, shall be the lesser of 131 months, or the top of the standard range.
- (2) The recommended length of community supervision shall be the lesser of 131 months, or a period equal to the top of the standard range.
- (3) The recommended length of treatment shall be three years, and for an offense committed on or after 7/1/05, the recommended length of treatment shall be no less than three years and up to five years, with the option of extending treatment by two-year increments.
- (4) For offenses committed prior to 7/1/05, the recommended length of confinement shall be six months, but may be in work release if eligible. For an offense committed on or after 7/1/05, the recommended length of confinement shall be no less than six months and up to 12 months or the maximum term within the standard range, whichever is less, but may be in work release if eligible.

d. For offenses occurring prior to July 1, 1990, different SSOSA provisions apply and the statutes must be carefully consulted.

e. Stipulated Trial

Because a guilty plea to a sex offense requires immediate confinement per RCW 10.64.025(2), because SSOSA evaluations take a considerable period of time to complete, and because most defendants need to work to pay for them, defendants often will request that the case be continued for trial to determine SSOSA eligibility. Trial continuances are often hard for victims to tolerate. When a defendant may be a good candidate for a SSOSA, the Deputy Prosecutor will oppose a trial continuance for the purpose of getting a SSOSA evaluation, but may agree to entry of a Waiver of Jury Trial and a Stipulation to Bench Trial on Agreed Documentary Evidence. By delaying the formal finding of guilt until the sentencing date, the defendant may continue to work to pay for the SSOSA evaluation and treatment (and restitution for the victim). The victim is relieved of the burden of having to testify and the stress caused by continuances of trial.

3. TAP and SAU cases

Sex offenders are generally excluded from TAP, the diversion program. Violent and predatory sex offenders are always excluded from diversion.

9.14 PROPERTY AND OTHER CRIMES

A. Burglary

1. Evidentiary Sufficiency

Whether charging burglary or vehicle prowling, there must be sufficient evidence of a specific crime which the defendant intended to commit within.

2. Charge Selection

a. Burglary in the First Degree, RCW 9A.52.020

Burglary in the first degree (and a deadly weapon/firearm enhancement as indicated in Standard 9.05) normally shall be charged if the defendant was armed with a deadly weapon/firearm and there is evidence that the defendant

intended to use, used, or attempted to use the weapon in the course of or in immediate flight from the building, or if the defendant substantially assaults any person during the incident. When the defendant steals a firearm or other deadly weapon in the burglary with no evidence of use or intent to use, the initial charge may be to a lesser charge or charges, with or without an enhancement, to reflect the defendant's intent to steal rather than to injure, such as Residential Burglary/Burglary 2 with an enhancement, Residential Burglary/Burglary 2 and Unlawful Possession of a Firearm, or Residential Burglary/Burglary 2 and Theft of a Firearm. When choosing the initial charge, the prosecutor will consider the defendant's prior criminal history, the relative standard range sentences, the defendant's culpability in the instant offense, and any other relevant factors. If the defendant does not wish to enter an early guilty plea to the initial charge, then the charge normally will be amended to First Degree Burglary with the deadly weapon/firearm enhancement.

b. Residential Burglary, RCW 9A.52.025

All legally sufficient burglaries of dwellings, as defined in RCW 9A.04.110(7) shall be charged as Residential Burglary.

c. Burglary in the Second Degree, RCW 9A.52.030

All other legally sufficient burglary cases shall be filed as Burglary in the Second Degree with the exception of those involving garages or fenced areas.

d. Garage Entries

Entries into open garages or carports may be handled as expedited crimes, if otherwise eligible, except in situations where property in excess of \$5000 in value is taken or damaged or the entry was for a purpose other than theft.

e. Fenced Areas

Entries into fenced areas may be handled as expedited crimes, if otherwise eligible, except in situations where property in excess of \$5000 in value is taken or damaged.

f. Storage Lockers

Entries into storage lockers and other secure storage areas shall be filed as burglary.

g. Motor homes and Boats

Entries into motor homes and boats equipped with permanent sleeping or cooking facilities may be handled as expedited crimes, if otherwise eligible, except in situations where property in excess of \$5000 in value is taken or damaged or the entry was for a purpose other than theft. See RCW 9A.52.095.

h. Vehicle Prowl 2nd Degree

Vehicle Prowl 2nd Degree (9A.52.100) shall be charged for entries of vehicles, other than motor homes and boats equipped with permanent sleeping or cooking facilities.

3. Multiple Counts

Different offices or businesses in the same building or structure are separate “buildings” and should be separately charged.

4. Additional crimes

a. A theft or possession of stolen property count normally should not be added unless there is a substantial question as to the sufficiency of the evidence to prove the entry by the defendant under at least an accomplice liability theory.

b. Malicious mischief in the first or second degree may be appropriately added where, in addition to theft, extensive vandalism occurs.

c. The appropriate assault charge may be added to burglary in the first degree to most accurately reflect the nature of the crime (i.e., assault, rape). There is no merger under RCW 9A.52.050.

5. Sentence Recommendation

- a. Residential burglary. In all residential burglary cases, a minimum recommendation of 90 days shall be made.
- b. Work Ethic Camp
 - (1) Offenders eligible for work camp (RCW 9.94A.690) are:
 - (a) those sentenced to a term of total confinement of not less than 12 months and 1 day nor more than 36 months; and
 - (b) have no current or prior convictions for any sex offenses or violent offenses; and
 - (c) are not currently subject to a sentence for, or being prosecuted for a drug case.
 - (2) The Deputy Prosecutor shall not recommend Work Ethic Camp without first receiving a Pre-Sentence Investigation Report from the Department of Corrections which recommends the defendant for Work Ethic Camp.
 - (3) In addition to the statutory prerequisites, the Deputy Prosecutor shall not recommend Work Ethic Camp unless there is a sufficient showing that the defendant has a substantial substance abuse problem, and either has a lack of vocational skills or has a substantial social handicap.
 - (4) The Deputy Prosecutor shall not recommend Work Ethic Camp if the defendant intended to enter an occupied residence.

- (5) The Deputy Prosecutor shall not recommend Work Ethic Camp if the defendant previously entered a diversion program which addressed a substance abuse problem.
 - (6) The Deputy Prosecutor shall not recommend Work Ethic Camp if the offense is a major economic offense.
- c. Drug Offender Sentencing Alternative (DOSA) (RCW 9.94A.660) and Burglary-type crimes
 - (1) The statutory eligibility requirements for a DOSA include:
 - (a) the offense must not be a violent offense, a sex offense, a felony DUI or felony Physical Control, or carry a deadly weapon or firearm enhancement;
 - (b) the defendant must not have other current or prior convictions for a violent or sex offense within 10 years of conviction for this offense; and
 - (c) the defendant must not be subject to a deportation detainer or order, or become subject to one during the sentence. RCW 9.94A.660.
 - (d) the end of the standard sentence range must be greater than 1 year.
 - (e) the offender cannot get a DOSA more than once in the 10 years preceding the current offense.
 - (2) The Deputy Prosecutor shall not recommend a DOSA without first receiving a DOSA Risk Assessment Report from the Department of Corrections which recommends a DOSA for the defendant.

- (3) In addition to the statutory prerequisites, the Deputy Prosecutor normally shall not recommend a DOSA if the defendant previously entered into a diversion program which addressed a substance abuse problem.

B. Arson and Malicious Mischief

1. Evidentiary Sufficiency

The applicable standard, 2.00(B)(1) or 2.00(B)(2), shall be used.

2. Charge Selection

a. Arson in the First Degree, RCW 9A.48.020

- (1) Arson in the First Degree based on a manifestly dangerous to human life theory should not be filed unless the danger is actual as opposed to potential. If there is evidence that meets the evidentiary sufficiency test of a design or specific intent to kill the occupant(s), a separate crime, in addition to Arson in the First Degree, shall be filed.
- (2) Arson to a building in which there was a non-participant in the crime shall be filed as first degree if the non-participant was actually endangered by the fire or if the fire-setting was part of a pattern of fire-setting.
- (3) Arsons which occur in multiple unit dwellings, such as jails, prisons, work release facilities, hotels, and apartment buildings, normally shall be filed as first degree. Exceptions may be made when the fire did not endanger human life, and the defendant took steps to contain the fire.
- (4) Arson in the First Degree, based on an insurance fraud theory, should not be filed unless there is evidence which meets the evidentiary sufficiency test of a specific intent to collect insurance proceeds.

- b. Arson in the Second Degree, RCW 9A.48.030
 - (1) Arson, other than the above, shall be filed as Arson in the Second Degree.
 - (2) An intentional fire, not involving actual buildings where the damage is less than \$5,000, shall be charged as reckless burning in the first degree when possible or malicious mischief otherwise.
- c. Reckless Burning in the First Degree, RCW 9A.48.040

Cases involving damage of less than \$1000 shall be charged as reckless burning in the second degree.
- d. Malicious Mischief in the First Degree, RCW 9A.48.070

Cases based upon an “interruption or impairment” of public service theory shall not be filed as first degree unless the interruption or impairment is substantial in its impact upon the public.
- e. Malicious Mischief in the Second Degree, RCW 9A.48.080

Cases involving a risk of interruption or impairment of public service shall not be filed unless the interruption or impairment, which is threatened, is immediate and substantial in its potential impact on the public. For example, causing a police vehicle to be out of service for cleaning or repair does not have a substantial impact upon the public if another police vehicle is available to replace it or if other police vehicles can adequately patrol the area normally assigned to the vehicle out of service.

C. Theft and Fraud Related Crimes

1. Evidentiary Sufficiency

See evidentiary standard 2.00(B).

2. Charge Selection

a. Degree - Value

Where the degree is determined by the value of the property, caution should be used to ensure that adequate proof of the requisite value is present before a charge is filed. Value is the market value at the time and place of the theft. RCW 9A.56.010(12). In the case of new goods offered for sale, the retail price shall be used to establish value. For used items, a blue book value of an item, coupled with a description of the condition of the item, shall be sufficient for establishing the fair market value for charging purposes. But for trial, testimony from someone who can be qualified as an expert in the value of the particular item may be necessary. The cost to the original owner or the replacement value is not the measure of value. In most cases, a victim's opinion is insufficient to establish value.

If a reasonable issue exists as to the value of the property, the case should be filed as the lower degree. Cases in which the value is close to or equal to \$5000 should be filed as second degree. Cases in which the value is close to or equal to \$750 shall be referred to the District Court Unit or the city attorney for prosecution as third degree.

b. Aggregation

Incidents that would constitute misdemeanor crimes when considered separately should be aggregated when they can be (i.e., pursuant to the common law, pursuant to RCW 9A.56.010(18)(c) for theft, pursuant to RCW 9A.56.010(18)(d) for possession of stolen property, or pursuant to RCW 9A.56.060(3) for UIBC.). The common law allows aggregation of a series of thefts from the same owner, the same place, and result from a single criminal impulse pursuant to a general larcenous scheme. The common law also allows aggregation of thefts from the same victim over a period of time, or from several victims at the same time and place, if the thefts are part of a common scheme or plan. State v. Atterton, 81 Wn. App. 470, 472, 915 P.2d 535 (1996). A series of thefts may be aggregated

into one felony count when committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period. RCW 9A.56.010(18)(c). Stolen property belonging to more than one victim, but possessed by the defendant at the same time, may be aggregated into one count. RCW 9A.56.010(18)(d). When multiple checks are unlawfully issued as part of a common scheme or plan, they may be aggregated into one felony count. RCW 9A.56.060(3).

Unit of prosecution: If a series of thefts from a common scheme or plan are aggregated, they must be aggregated into just one count, and cannot be grouped by time period into multiple counts. State v. Hoyt, 79 Wn. App. 494 (1995). But see, State v. Carosa, 83 Wn. App. 380 (1996), in which it was held proper to aggregate a clerk's multiple thefts from the till during each shift, for a total of three felony counts. Also, if a series of thefts are aggregated that were accomplished by different schemes but from the same victim, they must be aggregated into one count. State v. Turner, 102 Wn. App. 202 (2000).

c. Stealing or Possessing Stolen Firearms

A defendant who steals or possesses a stolen firearm shall be charged with Theft of a Firearm or Possessing a Stolen Firearm, regardless of the value of the firearm. While each firearm taken or possessed can be the basis for a separate charge, normally only one count of Theft of a Firearm or Possessing a Stolen Firearm will be filed initially. While the firearm must be real, it need not be loaded or operable. State v. Faust, 93 Wn. App. 373 (1998). The firearm can be disassembled. State v. Padilla, 95 Wn. App. 531 (1999).

d. U.I.B.C.

Unlawful Issuance of Bank Check or Draft (RCW 9A.56.060) shall be filed only if there is clear and convincing evidence that the defendant:

- (1) actually knew or had been notified that there were insufficient funds or credit to cover the instrument drawn or delivered; and
- (2) acted with intent to defraud.

e. Motor Vehicles

Taking a Motor Vehicle Without Permission in the First Degree shall be charged, regardless of the value of the vehicle, when there is sufficient evidence of the requisite alteration, removal of parts, exporting, intent to sell, or engaging in a conspiracy to solicit a juvenile to participate in the vehicle theft.

Theft of a Motor Vehicle shall be charged, regardless of the value of the vehicle, when there is sufficient evidence that the suspect took the vehicle with the intent to deprive the rightful owner.

Possession of a Stolen Vehicle shall be charged, regardless of the value of the vehicle, when there is sufficient evidence that the suspect knowingly possessed the stolen vehicle, knowing that it was stolen.

Taking a Motor Vehicle Without Permission in the Second Degree shall be charged only if the evidence is clear that the suspect's intent and actions constituted nothing more than short-term "joy riding", and no significant damage or loss occurred.

f. Possession/Use of Stolen Access Devices

The possession/use/attempt to use a stolen access device may fit the elements of multiple crimes, including PSP, forgery, theft, identity theft and/or possession of payment instrument. When multiple access devices are possessed or used, each access device can be an additional charge (unit

of prosecution). *State v. Ose*, 156 Wn.2d 140 (2005). Ordinarily, the initial charging document shall contain no more than one count for each stolen access device possessed. If the defendant elects to go to trial, sufficient additional counts may be added by amended information, to characterize the defendant's conduct, to ensure restitution to all victims, and to enhance the strength of the State's case at trial.

g. Forgery

Care should be taken to charge only the alternative theories of Forgery that can be proved at trial. Forgery shall be filed when the document made, completed, altered, possessed, or offered is completely false, i.e., it contains no real personal identifying information, or it is counterfeit currency. When the criminal act meets the elements of both Forgery and Identity Theft, i.e., the forged document contains real personal identifying information, the initial charge may be Forgery, unless one or more of the factors below are present:

- (1) the defendant used an Identification Card with the victim's name but the defendant's photograph to aid in the forged check or stolen access device transaction;
- (2) the defendant or cohort hacked into a computer database and obtained information to assist in the crime;
- (3) the defendant has directed others in mail theft, or production of forged or fake instruments, or
- (4) the return of merchandise obtained by fraud.

h. Identity Theft

Identity Theft in the First Degree shall be filed if there is sufficient evidence that the suspect actually obtained property or currency and sufficient evidence that the property or currency had a value over \$2,000. Multiple incidents of obtaining property or currency by fraudulent use of personal identifying information may be aggregated to form one count

of Identity Theft in the First Degree, but the aggregation may only involve the same victim. RCW 9.35.005. Prior to June 12, 2008, only one count of Identity Theft could be charged for multiple uses of the same piece of stolen identity/financial information from a victim. *State v. Leyda*, 157 Wn.2d 335 (2006). As of June 12, 2008, there is statutory authority to charge more than one count for multiple uses of the same piece of stolen identity/financial information. Criminal incidents involving Identity Theft often involve other crimes such as Possession of Stolen Property, Forgery, Theft, etc. Identity Theft is not the same criminal conduct as these other crimes, and does not merge with them. *State v. Baldwin*, 150 Wn2d 448 (2003); *State v. Leyda*, 122 Wn.App. 633 (2004)(*overturned re: unit of prosecution*). When there is sufficient evidence to support charging various crimes from a criminal incident or scheme, including sufficient evidence to charge Identity Theft, at least one count of Identity Theft normally shall be filed when: 1) the suspect has a criminal history involving identity theft; 2) the crime involved an elevated degree of sophistication, such as possession of altered identification cards to match forged checks or stolen access devices, or use or possession of computer-generated, fraudulent identification cards, checks, or access devices; 3) the suspect's criminal scheme crosses state lines; or 5) the suspect participated in or directed others to commit computer trespass, mail theft, burglary, vehicle prowl, or the production of forged or fake documents. Identity Theft in the Second Degree is the appropriate charge when a suspect gives another person's identification to a law enforcement officer for the purpose of avoiding arrest for an outstanding bench warrant or to avoid a criminal charge or a civil fraction, and additionally, the suspect is booked under the alias or a criminal charge or civil infraction is filed with the court under the alias. When an immigrant uses another person's social security number to obtain employment, open a bank account, or obtain a loan, and there is no evidence of intent to commit a crime other than avoiding deportation, we shall decline to file a charge and refer the matter to ICE for possible deportation.

i. Criminal Impersonation

While Identity Theft is the appropriate charge when a suspect possesses or uses a real person's identity with the intent to commit a crime, Criminal Impersonation in the First Degree is the appropriate charge when the suspect assumes a false identity, pretends to be a public servant, or pretends to be a representative of a person or organization, and does an act in the assumed character with intent to defraud another. If the identity assumed is not real, the sole criminal act is the giving of a false identity to a law enforcement officer, and the officer's reliance on that information is brief, the appropriate charge is a misdemeanor Refusal to Give Information (RCW 46.61.020), Obstructing (RCW 9A.76.020), or Making a False Statement (RCW 9A.76.175). If, however, the suspect signs official paperwork with the false name, or goes through identification procedures at the jail using the false name, a felony charge of Criminal Impersonation or Forgery is the appropriate charge. See *State v. Presba*, 131 Wn. App. 47 (2005).

j. Trafficking in Stolen Property

Trafficking in Stolen Property in the First Degree shall be filed when the suspect knowingly directed the theft of property for the sale to others. When the suspect transferred stolen property to another person, or received stolen property with the intent to transfer it to another person, and the evidence indicates that the suspect was engaging in a practice of trafficking in stolen property, the initial charge shall be Trafficking. When the suspect transferred stolen property to another person, or received stolen property with the intent to transfer it to another person, but the evidence indicates that this was an isolated incident or that the stolen property was worth less than \$750, then ordinarily the initial charge shall be Possession of Stolen Property.

k. Organized Retail Theft

Organized Retail Theft is the appropriate charge only if there is clear and convincing admissible evidence that the suspect participated in multiple thefts from mercantile establishment(s) with one or more accomplices, or that the suspect possessed stolen property from multiple thefts from mercantile establishment(s), knowing that it was stolen and knowing that it was stolen from mercantile establishment(s). At least one of the thefts must have occurred in Snohomish County for venue to lie in our county. The value of the property taken from all the mercantile establishments may be aggregated.

3. Sentence Recommendation

a. Exceptional Sentence

See Standard 9.09(D) re: exceptional sentence recommendations. Per RCW 9.94A.535, any of the following factors can be the basis for an exceptional sentence upward:

(1) Major Economic Offense or Series of Offenses

The offense involved multiple victims or multiple incidents per victim, or the offense involved attempted or actual monetary loss substantially greater than typical for the offense, or the offense involved a high degree of sophistication, planning or occurred over a lengthy period of time, or the defendant used his/her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(2) Vulnerable victim

The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

- b. Work Ethic Camp (RCW 9.94A.690)
- (1) Offenders Eligible for Work Ethic Camp are those who:
 - (a) are sentenced to a term of total confinement of not less than 12 months and 1 day nor more than 36 months; and
 - (b) have no current or prior convictions for any sex offenses or violent offenses; and
 - (c) are not currently subject to a sentence for, or being prosecuted for a drug case.
 - (2) The Deputy Prosecutor shall not recommend Work Ethic Camp without first receiving a Pre-Sentence Investigation Report from the Department of Corrections which recommends the defendant for Work Ethic Camp.
 - (3) In addition to the statutory prerequisites, the Deputy Prosecutor shall not recommend Work Ethic Camp unless there is a sufficient showing that the defendant has a substantial substance abuse problem, and either has a lack of vocational skills or has a substantial social handicap.
 - (4) The Deputy Prosecutor shall not recommend Work Ethic Camp if the defendant intended to enter an occupied residence.
 - (5) The Deputy Prosecutor shall not recommend Work Ethic Camp if the defendant previously entered a diversion program which addressed a substance abuse problem.
 - (6) The Deputy Prosecutor shall not recommend Work Ethic Camp if the offense is a major economic offense.

c. Drug Offender Sentencing Alternative (DOSA) (RCW 9.94A.660)

(1) The statutory eligibility requirements for a DOSA are:

- (a) the offense must not be a violent offense, a sex offense, a felony DUI or felony Physical Control, or carry a deadly weapon or firearm enhancement;
- (b) if a current offense is a VUCSA or a criminal solicitation to commit a VUCSA under RCW 9A.28, the offense must involve only a small quantity of the controlled substance;
- (c) the defendant must not have a current or prior conviction for a violent or sex offense within 10 years of conviction for this offense;
- (d) the defendant must not be subject to a deportation detainer or order, or become subject to one during the sentence;
- (e) the end of the standard sentence range must be greater than 1 year; and
- (f) the offender cannot get a DOSA more than once in the 10 years preceding the current offense.

(2) The Deputy Prosecutor shall not recommend a DOSA without first receiving a DOSA Risk Assessment Report from the Department of Corrections which recommends a DOSA for the defendant.

(3) In addition to the statutory prerequisites, the Deputy Prosecutor normally shall not recommend a DOSA if the defendant previously entered into a diversion program which addressed a substance abuse problem.

D. Escape

Charge Selection

1. Escape in the First Degree, RCW 9A.76.110

Escape in the first degree shall be charged in all cases when the escapee is serving a sentence resulting from a felony conviction. Escapes by defendant prisoners in a prison work release facility shall be charged as escape. State v. Thompson, 35 Wn. App. 766 (1983).

3. Escape in the Second Degree, RCW 9A.76.120

Escape in the second degree shall be charged when a person is charged with a felony, but not convicted of a felony, and escaped from any jail or work release facility.

4. Work Details and Prisoners in Transit

Prisoners who escape from work details, or while in transit from one facility to another, shall be charged only if the prisoner was physically in Snohomish County at the time he/she escaped from custody.

5. Escape in the Third Degree, RCW 9A.76.120

Escape in the third degree shall be charged if an individual has been arrested but not charged at the time of the arrest, and if the escape results in more than momentary freedom.

6. Bail Jumping, RCW 9A.76.170

Bail jumping charges shall be filed if evidence exists to prove that the defendant had personal knowledge of the date and the responsibility to appear, and the defendant failed to appear within 24 hours after the scheduled appearance date without a legitimate excuse. It may be appropriate to decline to file bail jumping charges if the defendant enters a guilty plea to the underlying charge with an increased State's sentencing recommendation. Likewise, bail jumping charges may be dismissed in return for a plea of guilty to the underlying charge if the defendant has not resisted return to this jurisdiction and no major costs have been incurred to obtain the defendant's return. If the substantive case is prejudiced by the bail jumping (witnesses lost, etc.), normally the

bail jumping charge will be prosecuted. If the defendant fails to appear for trial, it is the trial deputy's responsibility to amend the information to add a count of bail jumping.

E. Unlawful Possession of Firearm

1. Sufficiency of the Evidence

a. Definition of Firearm

While the firearm must be real, it does not have to be loaded or operable to be the basis for this charge. State v. Faust, 93 Wn. App. 373 (1998). A disassembled firearm can be the basis for this charge. State v. Padilla, 95Wn. App. 531 (1999).

There must be sufficient evidence that the defendant knew that he/she possessed the firearm. State v. Anderson, 141 Wn.2d 257 (2000).

b. The Predicate Offense

Unless the underlying conviction is from Snohomish County, a certified copy of the Judgment and Sentence shall be obtained before the case is charged. The predicate conviction can be either an adult conviction or a juvenile adjudication. State v. Wright, 88 Wn. App. 683 (1997). The crime shall not be charged unless the certified documents establish that the defendant was either represented by counsel or waived the right to counsel. The crime shall not be charged if the sentence on the underlying crime was after July 1, 1994, and the defendant was not advised that the privilege to possess firearms was taken away. See State v. Leavitt, 107 Wn. App. 361 (2001). The crime shall not be charged if the predicate offense was a misdemeanor or a gross misdemeanor for which the defendant was sentenced on or before July 1, 1994, and there are no circumstances connecting the firearm to an actual or a planned commission of a crime.

2. Charge Selection

Number of counts

While a separate count can be charged for each firearm possessed, normally only one count of Unlawful Possession of a Firearm will be filed initially.

F. Persistent Prison Misbehavior

1. Evidentiary Sufficiency

There must be sufficient evidence to establish that the defendant was sentenced for an offense committed on or after August 1, 1995 (established by certified copies of the Information and/or plea paperwork and the Judgment & Sentence); that the defendant was serving a sentence for that offense in a state correctional institution; that the defendant knowingly committed a serious infraction, as defined in WAC 137-25-030; that the infraction committed does not constitute a class A or class B felony; and that the defendant had already lost all potential earned early release time credit.

Before charging, the case file should have: written statements from witnesses to the current infraction(s) that establish that the current infractions occurred and contact information for those witnesses (if there are other inmate witnesses, a statement that they are willing to testify); a statement from DOC that the defendant had lost all of his/her potential earned early release time credit prior to committing the current infraction and sufficiently clear supporting documentation of the same; and the name and contact information of a Records Technician/Custodian who can testify to the loss of the earned early release time. Prior to trial, you will need to obtain certified copies of the Information and/or plea paperwork and the Judgment & Sentence for the offense for which the defendant was imprisoned.

2. Charge Selection

Persistent Prison Misbehavior is a class C Felony with a Seriousness Level of V. Thus, most other class C Felonies, and some class B Felonies, will carry a significantly lower sentence than Persistent Prison Misbehavior. The sentence imposed for

Persistent Prison Misbehavior must be served consecutive to any sentence being served at the time the crime is committed.

- a. If the serious infraction alleged to have been committed constitutes a class A or class B felony, then that felony must be charged rather than Persistent Prison Misbehavior.
- b. If the serious infraction constitutes a violent felony, then the case shall be handled by the Violent Felony Unit. If the serious infraction constitutes a felony sexual assault case, then the case will be handled by the Special Assault Unit. All other cases will be handled by the Non-violent Felony Unit.
- c. If the serious infraction constitutes a class C felony, the class C felony shall be charged initially. The sentence shall run consecutive to the sentence being served when the infraction was committed. RCW 9.94A.589(2)(a).
- d. If the serious infraction causes significant injury or fear of serious injury to another person, significant damage to property, or significantly disrupts prison operations, but does not constitute another felony, the case should be charged as Persistent Prison Misbehavior. With a lead DPA's approval, the State may agree to an exceptional sentence below the standard range that would be consistent with a sentence to a felony ranked as a Level I offense or the defendant may agree to enter a St. v. Barr plea to the Class C felony that most closely fits his/her behavior.
- e. If a serious infraction is referred in which the prisoner's actions did not cause significant injury or fear of serious injury, significant damage to property, and did not significantly disrupt prison operations, then there must be at least five post-good time infractions before we will charge those infractions as Persistent Prison Misbehavior.

3. Multiple Counts

Generally, only one count of Persistent Prison Misbehavior will initially be charged. However, an exception may be made where the defendant has committed more than 10 serious infractions in a twelve month period after losing all good-time credits. There, two or more counts of Persistent Prison Misbehavior may be charged.

4. Prisoner Already Released

If the prisoner was released from custody prior to the receipt by the Prosecutor's Office of the referral for Persistent Prison Misbehavior, then charges may be declined if the interests of justice will not be served by filing charges.

9.15 FELONY TRAFFIC OFFENSES

A. Evidentiary Sufficiency

See Standard 2.00(B).

B. Charge Selection

As with other felony crimes, when there is sufficient evidence of DUI, as well as a felony traffic crime, DUI should be charged along with the felony crime, unless the DUI is included as an element in the felony crime.

1. Vehicular Homicide, RCW 46.61.520

When there is more than one victim from the same incident, the number of counts initially charged depends upon the strength of the evidence as to each count, and the number of counts necessary to adequately reflect the nature of the incident. More than one victim may be included in the same count, if the defendant will plead guilty to such a count.

2. Vehicular Assault, RCW 46.61.520

When there is more than one victim from the same incident, the number of counts initially charged depends upon the strength of the evidence as to each count, and the number of counts necessary to adequately reflect the nature of the incident. More than one victim may be included in the same count, if the defendant will plead guilty to such a count.

3. Attempting to Elude, RCW 46.61.024

Attempting to Elude may be charged regardless of whether there was sufficient probable cause for the officer to signal the defendant to stop. State v. Duffy, 86 Wn. App. 334 (1997). A special allegation of endangerment may be charged when one or more persons other than the defendant or the pursuing law enforcement

officer was threatened with physical injury or harm by the actions of the defendant. RCW 9.94A.834. The endangerment enhancement shall be filed when a conviction on the underlying charge is likely, and a) a person other than the defendant and the pursuing officer was actually injured; or b) the defendant's vehicle collided with another occupied vehicle or an occupied building whether anyone was actually injured; or c) the defendant takes a route through an area where children are likely to be present and endangered, such as a school zone when school is in session, a playground, etc. or d) the defendant takes a route through an area occupied with pedestrians, such as driving on a populated sidewalk or through a populated parking lot.

4. Hit and Run – Death or Injury, RCW 46.52.020

Felony hit and run charges shall be filed when it is clear that the suspect knew that he/she had been in an accident with an attended vehicle or a pedestrian and the victim incurred any significant injury. State v. Vela, 100 Wn.2d 636 (1983). "Significant injury" need not rise to the level of "substantial bodily harm," but it is more than a minor bruise or cut or sore neck. To determine if the injury is "significant", generally a medical report is required.

C. Charge Reduction/Dismissal

1. Traffic offenses resulting in death

Traffic offenses resulting in death are high profile cases, and any reduction/dismissal of charges shall follow the exception to standard procedure, Standard 9.09(A).

2. Attempting to Elude

When the flight took place in connection with another greater felony crime, the Attempting to Elude charge may be dismissed upon a plea to the greater charge.

D. Sentence Recommendation

1. All sentence recommendations in felony traffic violations shall include notice that the defendant's driver's license will be revoked as a result of conviction. RCW 46.20.285.

2. Factors that may affect the recommended period of confinement within the standard range include:
 - a. prior driving offense history;
 - b. whether the defendant was insured at the time of the incident;
 - c. the degree of recklessness involved;
 - d. whether the alcohol/drug content in the breath/blood is greater or less than the typical case;
 - e. the degree of substantial bodily harm in Vehicular Assault cases;
 - f. the number of victims for which separate counts were not charged; and
 - g. whether the victim was a participant with the defendant in the conduct which led to the death or injury (e.g. racing, drinking).

9.16 DRUG CRIMES

A. Evidentiary Sufficiency

1. See generally, Basic Evidentiary Standard 2.00(B), Number of Charges Standard 2.01, and Deadly Weapon Allegation Standard 9.05.
2. Cases Involving Informants

The possibility that disclosure of an informant's identity will be required should be considered in every case in which an informant was used. The law enforcement agency referring the case must indicate at the time of referral:

- a. whether, and how, an informant was used;
- b. whether the informant was present at the transaction; and
- c. under what circumstances the identity of the informant may be disclosed.

If the law enforcement agency indicates that identity may not be disclosed, the case should not be filed unless it appears reasonably certain that disclosure will not be ordered. It should be assumed that disclosure will be required where the informant was present at the sale. For discussion of when disclosure will be required, see State v. Harris, 91 Wn.2d 145 (1978); State v. Casal, 103 Wn.2d 812 (1985); State v. Thetford, 109 Wn.2d 192 (1987); State v. Stansbury, 64 Wn. App. 601 (1992).

Disclosure should never be made unless there is a showing, either by affidavit or statement on the record, of why the informant's identity is "relevant and helpful" to the issue of guilt. If disclosure is ordered, the law enforcement agency shall be contacted before disclosure is made and given the opportunity to request dismissal rather than disclosure.

Cases in which an informant of known unreliability has been employed may be declined, reduced or dismissed at the discretion of the lead deputy.

3. Cases Based on Search Warrants

Law enforcement agencies are encouraged to submit drug search warrants for review by a Deputy Prosecutor prior to issuance and execution. Warrants so approved will be defended, assuming general evidentiary sufficiency of the referred case.

Exception to this policy include cases in which there has been a material omission or factual misrepresentation undisclosed to the reviewing Deputy Prosecutor, or in which there has been a procedural error in the timing or service of the warrant or the filing of required court documents.

A case which depends upon the evidence developed from execution of a warrant not pre-approved by a Deputy Prosecutor will be filed only if it is probable that the validity of the warrant will be upheld.

4. Work-offs

Law enforcement agencies will be expected to initiate and to secure work-off agreements from a criminal defendant prior to referral of that defendant's case to this unit. This unit will not approve reduction or dismissal of existing charges pursuant to a work-off agreement, absent exceptional circumstances and the agreement of the lead.

B. Charge Selection

1. Possession or Possession With Intent to Manufacture or Deliver

Possession with intent to deliver should be charged only where sufficient evidence exists to establish the requisite intent. Examples of such evidence are:

- a. a quantity in excess of personal use amounts;
- b. multiple packages;
- c. presence of paraphernalia associated with dealing, such as scales or multiple empty packages, baggies or bindles; or
- d. possession of large amounts of currency or customer records.

If doubt exists as to the State's ability to prove the intent, simple possession should be charged.

Facts which have been held insufficient to establish possession with intent include the following: State v. Hutchins, 73 Wn. App. 211 (1996) (393 grams of marijuana without other evidence of intent to deliver is insufficient); State v. Davis, 79 Wn. App. 591 (1995) (total of 19 grams of marijuana in six baggies and a film canister plus three containers with seeds and residue plus a box of sandwich baggies, a pipe and several knives insufficient); State v. Kovac, 50 Wn. App. 117 (1987) (total of 8 grams of marijuana in 7 baggies plus defendant seen selling one of the baggies insufficient); State v. Brown, 68 Wn. App. 480 (1992) (high narcotics area plus possession of 20 rocks of cocaine weighing 5.1 grams plus officer's opinion that that amount was in excess of normal personal use insufficient); State v. Wade, 98 Wn. App. 328 (1999) (high narcotics area plus possession of 9 rocks of cocaine weighing 1.3

grams plus two prior convictions for Delivery plus defendant's statement that he doesn't use insufficient). Trace amounts will not be enough unless a rational trier of fact could find the defendant intended to deliver the same cocaine he possessed. State v. Robbins, 68 Wn. App. 873 (1992).

Facts which have been held sufficient to establish possession with intent include the following: State v. Harris, 14 Wn. App. 414 (1970) (five one-pound bags of marijuana plus scales plus testimony that marijuana is sold to dealers by the pound sufficient); State v. Hagler, 74 Wn. App. 232 (1994) (24 rocks weighing total of 2.8 grams plus \$342 sufficient); State v. Lopez, 79 Wn. App. 755 (1995) (possession of \$826.50 plus two ounces plus 4.7 grams in 14 bindles after a drug transaction sufficient); State v. Johnson, 94 Wn. App. 882 (1999) (\$8,034 cash plus four balloons and a baggie containing heroin sufficient).

2. Delivery of Controlled Substance

- a. Due consideration shall be given to declining additional counts where multiple controlled buys were transacted for the sole purpose of raising defendant's offender score. See, State v. Sanchez, 69 Wn. App. 255 (1993).
- b. In instances where the defendant delivers the substance/amount shown below, to the same officer (or related officer of the same investigative unit) over a brief period of time, one count will be filed initially. If this matter proceeds to trial, all additional counts will be filed:

Marijuana: one ounce or less, per incident;

LSD: 12 or less "hits," per incident;

Cocaine: 1/8 ounce or less, per incident;

Heroin: one gram or less, per incident; or

Amphetamine/Methamphetamine: 12 or less "hits," per incident.

3. Additional Charging Considerations for Marijuana Possession, Possession with Intent to Deliver, Delivery, and Manufacture of Marijuana

a. Delivery of Marijuana

The sale/delivery of marijuana to an undercover officer or to a confidential source shall be charged in accord with the standards above.

b. Possession of Marijuana and Possession with Intent to Deliver

Our state law defining what constitutes illegal marijuana and our state law providing for a medical marijuana affirmative defense have severely restricted the ability to successfully prosecute a marijuana crime that does not involve a sale or delivery of marijuana to an undercover officer or a confidential source. The Washington citizenry has sent a clear message that prosecution of most possessory marijuana crimes should be a low priority. We will prosecute felony Marijuana Possession, Possession with Intent, and Manufacture or Marijuana crimes when the offender represents a real and present danger to the community, if not prosecuted. These cases will be judiciously chosen after consultation with the referring law enforcement agency. Factors that may indicate an offender represents a real and present danger to the community include but are not limited to:

- i. Evidence of dealing to those under the age of 18;
- ii. Evidence of dealing in a school zone;
- iii. Evidence of being armed with a firearm;
- iv. The offender's criminal history score is 6 or more;
- v. The offender has a previous conviction for Delivery or Possession with Intent within the last 5 years; or

- vi. Evidence of large scale distribution, based on unusually high number of plants, unusually high amount of cash, and/or unusually high amount of short-stay traffic to the offender's property.

Before a charge of felony Possession of Marijuana or Possession with Intent to Deliver will be filed, there must be:

- i. A State Crime Lab report, establishing that the substance has a THC concentration greater than 0.3 percent on a dry weight basis, and indicating that the dry weight of the Marijuana is over 3 pounds. This minimum amount takes into account the allowed amount of marijuana under our state law for those over 21, as well as the presumptive amounts allowed if one qualifies as a patient and as a provider for the medical marijuana defense. RCW 69.51A.005; RCW 69.51A.010; WAC 246-75-010.

c. Manufacture of Marijuana – grow operations

Before a charge of Possession with Intent to Manufacture of Marijuana will be filed, there must be:

- i. Evidence to establish that the defendant is not licensed by the State of Washington to grow Marijuana.
- ii. Photograph and otherwise document any medical marijuana authorization. Investigator should always ask if the growers have medical authorization to use marijuana and/or provide medical marijuana.
- iii. At least 100 mature plants if tended by a single grower, or at least 120 mature plants if tended by husband/wife or roommate/roommate growers.
- iv. Each plant should have a root ball. See, *U.S. v. Robinson*, 35 F.3d 442 (9th Cir. 1994).
- iv. Sufficient documentation of the number of plants, and the root balls on the plants: photos of the grow operation as a whole, photos of any distinct sections of the grow, and for the first 100 plants (120 if two

growers) with a root ball, photos of the plant in the pot and then the same plant with the root ball exposed. It is preferred that numbered placards and size scales be used in the photos to identify the plants. If there are more plants with root balls beyond the first 100/120, document in the report.

- v. For the first 100 plants (120 if two growers) with a root ball, a sample of the bud from the plant should be harvested, packaged separately, and marked with a number that corresponds with the number assigned to the plant it came from. The packaging material should minimize leakage and should allow for the plant material to dry without molding.
- vi. If the operation appears to be a collective medical marijuana garden with more than 45 plants, document and photograph whether the plants have been cordoned off into separate and distinct areas, and whether these separate and distinct areas have posted medical marijuana authorizations.

Spouses/Roommates Residing in an Illegal Marijuana Grow House

When there is sufficient evidence to establish that both were involved in the care and tending of an illegal grow operation, both shall be charged with Manufacture of a Controlled Substance. When the evidence indicates that one was responsible for the operation, but the other had knowledge of it and used the marijuana, the former shall be charged with Manufacture of a Controlled Substance, and the latter shall be charged with Possession of Marijuana Over 40 Grams. When the evidence indicates that one was responsible, and the other had knowledge only of the operation, then the former shall be charged with Manufacture of a Controlled Substance and the latter shall be charged with a misdemeanor. When the evidence indicates that one was responsible for the operation, and the other had no knowledge of the operation, the former shall be charged with Manufacture of a Controlled Substance and the latter shall

not be charged. When there is no evidence as to the relative culpability of the two, initially both shall be charged with Manufacture of a Controlled Substance.

Search warrants to seize grow operations

It is recommended that the affidavit include: a) the suspect is not licensed to grow marijuana by the State of Washington; b) the suspect is not registered in any state registry for qualified patients or providers, because no such state registry exists; and c) further provides any available evidence to disprove legal possession for medical marijuana purposes, such as admissions of non-medical marijuana sales by the suspect, or sale/delivery to an undercover officer or confidential source who is not a qualified patient.

4. Deadly Weapon Allegations

- a. See Standard 9.05.
- b. In search warrant situations, a deadly weapon allegation shall be filed if there is clear and cogent evidence that the weapon was operational and the weapon is easily accessible and readily available for use.

5. Enhancements, RCW 9.94A.510 and RCW 69.50.435

When a conviction on the underlying charge is likely, and there is sufficient evidence to prove the basis for the enhancement, the enhancement shall be charged under the following conditions:

- a. School and School Bus Zone enhancement shall be filed only if:
 - (1) the actual or intended transaction or manufacturing process is for profit, monetary or otherwise; and
 - (2) the offense took place on school grounds or in direct proximity to a school or its usual access routes at a time when students are likely to be present; or
 - (3) a student or minor is involved in the transaction or manufacturing process, or is the intended recipient of the drug.

- b. Other enhancements based on occurrence in a public place or facility, or in a county jail or State correctional facility, shall be filed only with approval of the Chief Criminal Deputy.
- C. Drug Court Referral or TAP Referral

See Section 9.07 and Section 9.03.
- D. Sentence Recommendation
 - 1. Drug Offender Sentencing Alternative (DOSA) (RCW 9.94A.660)
 - a. The statutory eligibility requirements for a DOSA are:
 - (1) the offense must not be a violent offense, a sex offense, or carry a deadly weapon or firearm enhancement;
 - (2) the defendant must not have a current or prior conviction for a violent or sex offense;
 - (3) the offense must involve only a small quantity of the particular controlled substance; and
 - (4) the defendant must not be subject to a deportation detainer or order, or become subject to one during the sentence.
 - b. The Deputy Prosecutor shall not recommend a DOSA without first receiving a DOSA Risk Assessment Report from the Department of Corrections which includes an assessment of whether the defendant is likely to succeed in treatment and remain crime-free, which indicates the degree of risk to the community, and which recommends a DOSA for the defendant.
 - c. The Deputy Prosecutor shall recommend a DOSA only if it is an agreed condition of the sentence that the Department of Corrections will provide the court with quarterly reports regarding the defendant's progress in treatment, and will report to the court any violations of the conditions of the sentence.
 - d. As to sentences 24 months or less, the Deputy Prosecutor shall not agree to a DOSA if there are no community-based treatment beds available that meet the DOSA requirements.

- e. As to sentences over 24 months but less than 48 months, the Deputy Prosecutor shall not agree to a DOSA because the defendant will not serve at least 12 months in confinement, the minimum time to complete a meaningful treatment program.
 - f. The Deputy Prosecutor generally shall not recommend a DOSA if the defendant previously entered into a diversion program which addressed a substance abuse problem.
- 2. Exceptional Sentence Upward—Major Violation of the Uniform Controlled Substances Act, RCW 9.94A.535
- 3. Work Ethic Camp (RCW 9.94A.690)
 - a. Eligible offenders are those who:
 - (1) are sentenced to a term of total confinement of not less than 12 months and 1 day nor more than 36 months;
 - (2) have no current or prior convictions for any sex offenses or violent offenses; and
 - (3) are not currently subject to a sentence for, or being prosecuted for, another drug case.
 - b. The Deputy Prosecutor shall not recommend Work Ethic Camp without first receiving a Pre-Sentence Investigation Report from the Department of Corrections which recommends the defendant for Work Ethic Camp.
 - c. In addition to the statutory prerequisites, the Deputy Prosecutor shall not recommend Work Ethic Camp unless there is a sufficient showing that the defendant has a substantial substance abuse problem, and either a lack of vocational skills or a substantial social handicap.
 - d. The Deputy Prosecutor shall not recommend Work Ethic Camp when a defendant is a major drug dealer (e.g., selling in quantities greater than those listed in B(2)(b) above).
 - e. The Deputy Prosecutor shall not recommend Work Ethic Camp if the defendant has a probable history of earning substantial amounts of money from illegal drug transactions.

- f. The Deputy Prosecutor shall not recommend Work Ethic Camp if the defendant previously entered into a diversion program which addressed a substance abuse problem.

4. Standard range sentences

For Possession of a Controlled Substance, a minimum recommendation shall be as follows:

Offender Score	0 to 2			3 to 5			6 to 9+		
Level III	51 to 68 (51 to 60 if PCS w/ FE)			68+ to 100			100+ to 120		
Offer	51 mos	56 mos	60 mos	68+ mos	72 mos	84 mos	100+ mos	105 mos	110 mos
Level II	12+ to 20			20+ to 60			60+ to 120		
Offer	12+ mos	14 mos	16 mos	20+ mos	36 mos	48 mos	60+ mos	84 mos	96 mos
Level I	0 – 6			6+ to 12			12+ to 24		
Offer	20 days	30 days	60 days	6+ mos	9 mos	12 mos	15 mos	17 mos	19 mos

9.17 PERSISTENT OFFENDERS (THREE STRIKES/TWO STRIKES OFFENSES)

RCW 9.94A.030 defines the offenses which are “most serious offenses,” thereby counting as strikes. Depending on the nature of the most serious offenses, a second or third strike results in the offender being deemed a “persistent offender” with a mandatory sentence of life in prison. The list of offenses included in the “most serious offenses” is determined by the legislature. The Deputy Prosecutor shall comply with the intent of the legislature, and shall not alter the charges for the sole purpose of avoiding the imposition of life imprisonment. Nevertheless, because of the severe impact upon the defendant if convicted, the strength of the evidence necessary to prove the strike offense must be considered. Persistent Offender charges will not be filed in “marginal” or extremely circumstantial cases. Persistent Offender charges will only be filed if supported by clear and convincing evidence of the defendant’s guilt. Filing of a Persistent Offender case shall only occur with approval of the Prosecuting Attorney or the Chief Criminal Deputy. Such approval shall be noted by written memorandum. Should the trial and/or sentencing deputy believe circumstances justify a letter to the governor requesting early consideration of clemency, such request shall be directed to the Prosecuting Attorney for approval.

9.18 SENTENCE MODIFICATION FOR NON-COMPLIANCE

A. Court’s Authority

Whenever the court finds that an offender willfully failed to comply with a condition of a sentence, the court may modify its order of judgment and sentence, including imposing up to 60 days for each violation; converting a term of partial confinement to total confinement; and converting community restitution to confinement. RCW 9.94A.634. Any time served in confinement awaiting a hearing on non-compliance shall be credited against any confinement ordered by the court.

B. Role of the Prosecutor

The role of the Deputy Prosecutor at any sentence modification hearing is to represent the interest of the State. If the court finds that the defendant did not comply with any requirement or condition of the sentence, the Deputy Prosecutor should make an independent recommendation for disposition which may or may not be consistent with that of the community corrections officer. The community corrections officer should always be given an equal opportunity to make a recommendation to the judge.

Nothing in this section prohibits the filing of escape charges or other charges for new criminal conduct, if appropriate.

C. Prosecutor's Recommendation

1. Defendant Sentenced under SSOSA

a. New Offense as Violation

The Deputy Prosecutor shall recommend revocation of the suspended sentence when there is probable cause that the defendant has committed a new sexual offense or a new felony.

b. Other Failure to Comply Violations

Violations of treatment plans, including violation of no contact orders, shall result in a recommendation of revocation of the suspended sentence. Other failure to comply violations shall be handled as set forth below.

2. All Other Defendants

a. New Offense as Violation of Community Supervision

No additional confinement time shall be recommended because the sentence for the new offense should provide for an appropriate penalty, unless the defendant was specifically ordered by the court not to commit any new offenses, e.g., first time offender waiver.

b. Recommendation for Other Failure to Comply Violations

(1) Failure to perform community restitution: one day of total confinement for eight hours of community restitution up to the maximum number of days of total confinement allowed.

(2) Willful failure to pay restitution or fines: a minimum recommendation of 10 days of total confinement, converted to partial confinement as appropriate. Alternatively, a recommendation that all but the CVC and restitution be converted into total confinement, at a rate of \$60 per day of jail, up to the maximum number of days of total confinement allowed.

- (3) Failure to serve confinement: up to one additional day in confinement for each day not timely served, up to the maximum number of days of total confinement allowed.
- (4) If the violation is contacting a person who is the subject of a no contact order, the recommendation shall be for a period of total confinement.

9.19 APPEAL OF JUDGMENT AND SENTENCE

A. Procedure for State's Appeal

Whenever there is a basis for a state's appeal (see RCW 9.94A.585), the assigned deputy shall review the case with his/her supervisor. If the supervising deputy decides that a state's appeal should be contemplated, the case shall be referred to the supervising appellate attorney for review and recommendation regarding appeal. Only the supervising appellate Deputy Prosecutor, the Chief Criminal Deputy or the elected Prosecuting Attorney has authority to authorize a state's appeal of a sentence.

9.20 PRETRIAL AND POST-TRIAL RELEASE

A. Prosecutor's Recommendation Regarding Release

1. Cases pending charging or trial

Whether the case is pending charging or trial, the Deputy Prosecutor shall base the recommendation for personal recognizance release or the setting of bail on the factors set forth in CrR 3.2.

a. Amount of Bail

The amount of bail requested shall be commensurate with the seriousness of the charge and the likelihood that the defendant will fail to appear, will commit a violent offense, intimidate witnesses, or otherwise interfere with the administration of justice. For capital cases, no bail shall be recommended.

- i. Generally, in sex offense cases, the State will recommend no less than \$20,000.00 bail.
 - ii. Generally, for other Class A felonies, the State will recommend no less than \$20,000.00 bail.
 - iii. Generally for other Class B felonies, the State will recommend no less than \$10,000.00 bail.
 - iv. Generally, for other Class C felonies, the State will recommend no less than \$5,000.00 bail.
- b. Posting of cash with the clerk's office, in an amount equal to 10% of the amount that would be required from a bail bond company, but without a bail bond filed with the clerk, shall be opposed.
- c. The posting of property in lieu of a surety bond shall be opposed.

2. Cases pending sentencing

Once a defendant has been convicted of a felony and is awaiting sentencing, the defendant shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. RCW 10.64.025(1). Once a defendant has been convicted, RCW 10.64.025 directs that any bail bond posted on the defendant's behalf shall be exonerated. Therefore, the State shall seek a new bail order pending sentencing if the above exception to detention is not met.

For most sexual felony offenses, the defendant shall be detained pending sentencing. RCW 10.64.025(2).

3. Cases pending appeal

A sentence should not be stayed pending appeal if

- a. the defendant is likely to flee or to pose a danger to any other person or the community if released,
- b. the delay resulting from the stay will unduly diminish the deterrent effect of the punishment, or

- c. a stay of the judgment will cause unreasonable trauma to the victims or their families.

For most felony sexual offenses, the conviction should not be stayed pending appeal. RCW 9.95.062.

If the judgment is stayed, the court may set conditions of release, which may include bail. RCW 10.73.040; CrR 3.2(h). The Deputy Prosecutor should recommend all of the following conditions:

- i. That the defendant commence serving the term of confinement stayed pending appeal within 30 days of the appellate court issuing a ruling or opinion that affirms the conviction or dismisses the appeal;
- ii. If financial obligations have been imposed, the defendant must either:
 - (a) make the payments required by the judgment (to the extent of his/her or financial ability); or
 - (b) post an adequate performance bond to assure payment. RCW 9.95.062(1)(d).

The defendant should be allowed to choose between these options. The defendant should be warned that most bail bond companies will refuse to issue performance bonds.

- (3) Bail: When a defendant is appealing a conviction which resulted in a prison sentence, the recommendation should be that the defendant be held without bail. When a defendant is appealing a sentence of confinement of one year or less, the Deputy Prosecutor should recommend bail as follows:

<u>Period of Confinement</u>	<u>Amount</u>
1–60 days	\$500 - \$2,000
60 days–6 months	\$1,000 - \$5,000
6–9 months	\$2,000 - \$10,000
9–12 months	\$5,000 - \$25,000

Deviation from this standard requires a supervisor's approval.

- (4) No possession of firearms and no arrests are standard conditions, as well as a condition that the defendant diligently prosecutes the appeal.

B. Additional Conditions of Release

1. If the crime alleged arises out of a continuing relationship between the defendant and the victim, the Deputy Prosecutor shall recommend that any release be contingent upon no contact by the defendant with the victim.
2. For driving related offenses, the Deputy Prosecutor shall recommend that any release be contingent upon no driving without a valid license and insurance.
3. For alcohol and drug related offenses, the Deputy Prosecutor shall recommend that any release be contingent upon no possession or consumption of alcohol and/or drugs, unless legally prescribed.

The Deputy Prosecutor shall move to revoke release if the defendant does not comply with imposed conditions.

CHAPTER TEN JUVENILE COURT CHARGING AND DISPOSITION STANDARDS

10.00 GENERAL PRINCIPLES

These Juvenile Standards are designed to be largely consistent with the standards in previous chapters. When issues are not otherwise addressed here, those other standards should be consulted. In the event of a conflict between a standard in this chapter and a standard in any other chapter, the standard of this chapter shall be applied to juvenile court cases.

These Standards reflect a commitment that punishment should be certain, predictable, and proportionate to the seriousness of the criminal act and the juvenile's danger to the community. In addition, as contemplated by State law, the sentencing of most juvenile offenders shall include treatment provisions in appropriate cases.

In terms of charging decisions, the accurate characterization of a criminal act requires more than evidentiary sufficiency. Accurate characterization of juvenile offenses is complicated by the necessity of applying adult criminal code labels to what may be a "juvenile" act. These Standards are intended to guide the labeling of criminal acts by juveniles based on age, seriousness of crime, prior criminal record, criminal sophistication, and intent of the offender. In most cases, the labeling will be consistent with that attached to the same acts committed by an adult.

10.01 THE SCREENING DECISION

A. Number of Counts Filed

1. Cases will be screened to accurately characterize the offender's criminal acts without assuming the subsequent reduction or dismissal of counts. Normally, a single criminal incident shall be reflected in a single count unless the filing of only one count would depreciate the seriousness of the incident.
2. Where a sexual abuse case has covered many incidents over a period of time or multiple victims, more than one count may be necessary to reflect the entire history. Where two crimes may appear to cover the factual allegation, and they are not lesser-greater offenses, both may need to be charged (possibly in the alternative).

3. As a general rule, no more than three counts should be charged in a single information when the offender has been involved in multiple criminal incidents. This is in recognition that in the disposition of multiple offenses, the court's authority is limited to 300% of the sanctions imposed on the most serious offense because juvenile sentences are required to be served consecutively. RCW 13.40.180(2).

B. When the Offender or Witnesses are No Longer in the County

1. Offender Out of County, But Within State – Crime Committed in Snohomish County

A case will be screened in the county where the crime was committed. A case will be filed in the county where the crime was committed or diverted to the county of residence.

2. Witnesses Out of County, But Within State

A case will be filed regardless of where the in-state witness lives unless the cost of prosecution is excessive in view of the seriousness of the offense.

3. Offender Living Out of State – Crime Committed in Snohomish County

If the offender is living out of state, a case will be filed unless it was divertible pursuant to these Standards, in which instance it usually will be closed out. Normally, the State will not seek interstate requisition of the offender unless funds are available.

Note: The State's right to proceed against an offender who has moved out of state is protected by issuing a warrant on a case which has been filed. Frequently a juvenile's absence from the State is only temporary.

4. Witnesses Out of State

Generally, a case which requires out-of-state witnesses will not be filed. Exceptions may be made depending upon the facts of the case, where the offense involved is a violent crime against a person, or the involved offender represents a significant danger to the community. Such exceptions must be approved by the supervising deputy.

C. Offenders Under Age 12

The following factors will be considered in determining whether to charge an offender under the age of 12:

1. age;
2. whether the offense was a property offense or an offense against persons;
3. the seriousness and sophistication of the offense;
4. whether there is a history of similar conduct; and/or
5. apparent likelihood there will be intervention or treatment for offense related conduct independent of juvenile court.

In all cases filed, however, there must be sufficient evidence to indicate that the respondent understood the act and knew that it was wrong.

D. Multiple Pending Charges

It is proper to refuse prosecution if the offender is facing charges for which the standard range does not call for commitment, if the offense has three or more counts pending, unless the case referred for prosecution is a felony against persons or the filing is necessary to protect a significant restitution interest.

E. Lead DPA Review

Charging decisions in all cases shall normally be reviewed by the Lead Juvenile DPA (or another DPA in the lead's absence). One function of the lead is to help coordinate multiple files and try to address all of a respondent's pending cases at the same time.

F. Cases in which the parent is the victim

Normally, the Deputy Prosecutor or victim advocate shall interview the parent-victim prior to making a charging decision, and when that is not possible, as soon thereafter as possible. The interview may be by telephone or in person. Due to the high incidence of parent-victims recanting or failing to cooperate with prosecution in these cases, the charging decision should include an evaluation of the viability of the case if the parent-victim has recanted or becomes uncooperative at the time of trial. Other evidence that may be available include eyewitness testimony

(including from any competent children present), officer observations, documentation of injury/damages or lack thereof, Smith affidavits, excited utterances, respondent's admissions, and when relevant to the particular crime, past history of violent or threatening behavior towards household members. The fact that a victim does not desire prosecution is not by itself reason to decline, although it is often the case that there will be insufficient evidence to proceed without the cooperation of the victim. The victim's wishes, and the effect of the victim's position on the viability of the case, shall be considered in the charging decision, as well as the seriousness of the incident and whether the respondent has engaged in violent or threatening behavior against the parent-victim or other household members in the past.

10.02 ALLEGING PRIOR CRIMINAL HISTORY

Course of Conduct

The prosecuting attorney construes offenses to have arisen out of the same course of conduct in the same manner as adult cases adjudicated under the SRA.

10.03 DIVERSION

A. Introduction

The Diversion Unit is an arm of juvenile court probation and is organized under the authority of Superior Court. Diversion is a central component of the juvenile code intended to hold minor offenders accountable without the expense, stigma and trauma of formal prosecution in court by involving the community in responding to juvenile offenses. In Snohomish County, diversion is a cooperative venture involving participation by the Prosecutor's Office, the Snohomish County Department of Youth Services, community agencies, and the State Division of Juvenile Rehabilitation.

The adoption by the Prosecuting Attorney of standards governing diversion is, in part, intended to promote cooperation among diversion agencies by making prosecutorial decision-making consistent and predictable. Publication of diversion standards also will serve to hold the Prosecutor's Office and diversion agencies accountable for their handling of diversion.

Several primary policies underlie the diversion standards:

1. Diversion is an effective, cost-efficient method of handling large numbers of relatively minor offenses. It allows criminal justice resources to be focused on the more serious offenders. Diversion should be utilized whenever it is consistent with public safety goals, it is adequate to protect the victim's restitution rights, and sufficient in the degree of accountability it affords.
2. Diversion agreements must be enforced. Maintaining accountability and credibility is central to successful diversion. Divertees should know that failure to comply with a diversion agreement will result in prosecution and a sanction for non-compliance.
3. Agencies responsible for diverted cases, including the Prosecutor's Office, should process diversions expeditiously and document reasons for delays.
4. Diversion agreements must be confined to the terms permitted by law. Within those limits, the Deputy Prosecutor normally will support the Diversion Unit's discretion by seeking enforcement of the terms of the agreement.

B. Diversion Standards

1. Cases in which the offender is statutorily eligible for diversion bypass the Prosecutor's Office and are referred to the court probation department's Diversion Unit. The Prosecutor's Office does not see these cases unless the Diversion Unit rejects the offender, the offender rejects diversion, or the offender fails to successfully complete diversion.
2. When a case is referred to the prosecuting attorney's office and the Deputy Prosecutor determines that the case should appropriately be filed as a non-felony, the Deputy Prosecutor must divert it if the offender has no history, and if the case has not been previously rejected by the Diversion Unit. However, when the case seems sufficiently serious, the Deputy Prosecutor can request the Diversion Unit to exercise its discretion, reject the case, and return the case for filing.

3. A Deputy Prosecutor may divert non-felonies, if the offender is eligible (e.g. doesn't have three prior diversions, hasn't been to JRA, and the case hasn't been rejected by Diversion). On the other hand, even where the offender is diversion-eligible, the Deputy Prosecutor is free to file the non-felony, unless the offender has no history at all. In deciding whether to file, the Deputy Prosecutor should be guided by the seriousness of the alleged offense, and other factors such as those found in Section 10.01(C). Sex offenses should not be diverted.
4. When authorized by statute, Class C felonies may occasionally be diverted. However, diversion of Class C felonies shall normally only involve relatively minor property offenses.
5. After a case is filed, "rediversion" is allowed if the case would have been initially appropriate for diversion. In deciding whether to redivert, the Deputy Prosecutor shall examine the reasons for diversion rejection and the offender's conduct subsequent to the rejection.

10.04 DECLINES TO ADULT COURT

"Declines" to adult court are largely governed by RCW 13.40.110. Any party may initiate a decline hearing by filing a motion to transfer jurisdiction of the offender to adult court. The juvenile court, after a decline hearing, may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public.

A. The Filing Decision

The State's motion to transfer to an offender to adult court should be filed with the information. The motion must be set for a hearing before the Information is heard on its merits. RCW 13.40.100. The declination hearing must be held within 14 days after the filing of the Information, unless extended by the court for good cause. RCW 13.40.110, JuCR 8.1.

1. Mandatory Decline Hearings

A decline hearing shall be set when, at the time of the offense:

- a. The respondent was 16 or 17 years of age and committed a class A felony or an attempt, solicitation, or conspiracy, to commit a class A felony; or
- b. The offender was 17 years of age and committed assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree or robbery in the second degree; or
- c. The respondent was previously sentenced to age 21 and committed an escape.

2. Discretionary Decline Hearings

A decline hearing in other cases may be set at the discretion of the Deputy Prosecutor, and upon approval of the lead DPA. Such motions normally will be made in all murder cases. Otherwise, such motions will be rare, and dependent upon compelling Kent criteria discussed in Section 10.04 (B).

3. Automatic Declines

RCW 13.04.030 sets forth certain offenses which must be filed directly into adult court, when the offender is 16 or 17. The offenses include Murder 1 and 2, Assault 1, Kidnap 1, Rape 1, Child Rape 1, Robbery 1, and others – the statute needs to be consulted carefully. The Juvenile Unit will handle the initial hearings in Juvenile Court, but upon transfer of the case to adult court, the case will be handled by the appropriate adult felony unit.

B. State's Position on Decline

1. General Procedure

The State's position on all decline hearings shall be recorded in writing and subjected to the advance review of the Lead Juvenile Deputy. Mandatory declines shall not be waived without approval of all parties and the court.

2. Criteria for Determining the State's Position on Decline cases

The State may recommend that jurisdiction over the offender be declined in favor of adult prosecution, based on the following factors:

a. The serious character of the offense requires that it be submitted to adult jurisdiction. In determining the seriousness of an offense, the Deputy Prosecutor shall consider:

- (1) whether a weapon was used;
- (2) whether the offense was committed in an aggressive, violent, premeditated or willful manner, Kent v. United States, 383 U.S. 541, 86 S. Ct.1045 (1966); and
- (3) whether the offense was against persons or property, Kent v. United States, supra.

b. There are significant differences between the probable dispositions in juvenile court and adult court, and the public interest is best served by an adult court disposition. To determine whether an adult court disposition better serves the public interest, the Deputy Prosecutor shall consider:

- (1) Length of confinement;
- (2) Security of confinement; and

The juvenile institutions should be considered non-secure as a matter of both physical plant and institutional philosophy. Offenders who are likely to escape or commit crimes of violence are unlikely to be contained adequately in the juvenile system;

- (3) Rehabilitative Resources.

Treatment is an appropriate goal. The availability and quality of treatment programs, both institutional and community based, vary between the adult and juvenile systems. When an identifiable and treatable problem exists, an assessment should be made of the treatment options in both the juvenile and adult systems.

- c. Effective prosecution may be more likely in one system than the other.

Among other factors, the Deputy Prosecutor's decline recommendation may take into account the prosecutive strength of the complaint, Kent v. United States, supra, and the desirability of trial and disposition of the entire offense in a single proceeding, Kent v. United States, supra.

- d. The sophistication and maturity of the offender indicates that he/she is living as an adult and should properly submit to adult jurisdiction.

The sophistication and maturity of the offender are determined through consideration of his/her home, environmental situation, emotional attitude and pattern of living. Case workers should be consulted. Psychological evaluations shall be considered, to the extent they are available.

- e. The record and previous history of the juvenile offender indicates that he/she has exhausted the resources of the juvenile system.

In determining whether a juvenile offender has exhausted the resources of the juvenile system, the Deputy Prosecutor shall consider the offender's previous contacts with law enforcement agencies and juvenile courts, and whether the offender has served prior probationary terms or commitments to juvenile institutions, Kent v. United States, supra.

10.05 DISPOSITION

A. Reduction or Dismissal of Counts

Reasons for any proposed dismissal or reduction should be written in the file and approved by the lead. In violent felony or sex cases, a decision to dismiss or reduce charges normally will be discussed in advance with victims when reasonably feasible. See §5.04 for additional expectations regarding communications with crime victims.

B. Disposition Recommendation Within Standard Range

Normally, the Deputy Prosecutor will “reserve” the State’s sentencing recommendation until after review of Probation’s disposition report. The Deputy Prosecutor’s disposition recommendation normally will be within the standard range. The following factors may be considered in determining what specific recommendations, within the applicable standard range, will be made.

1. Proof problems.
2. The ability and willingness of the offender to provide information or testimony that reasonably will lead to the conviction of others who are equally or more culpable than the offender.
3. Relative culpability or responsibility of the offender.
4. The willingness of the offender to plead guilty and the consequent benefit to the criminal justice system in savings of time and expense.

C. Limitation on Community Service Hours

Regardless of the standard range or the cumulative effect of consecutive sentences, the Deputy Prosecutor normally will not recommend a total of more than 72 hours of community service. Where the standard range or consecutive sentences would call for more than 72 hours of service, the Deputy Prosecutor may recommend confinement in lieu of additional community service at the rate of one day for eight hours of community service.

Research, confirmed by experience, demonstrates that excessive community service requirements are counterproductive because of the increased likelihood of a failure to comply. There is some data suggesting that failures to comply begin to increase when more than 50 hours are assigned. Community service placement sites and monitoring cost money to operate, as do modification hearings held to punish noncompliance. It is a more prudent allocation of resources to use confinement rather than community service as punishment to the extent that a community service obligation is likely to result in non-compliance. The standard range may articulate both community service and detention as punitive sanctions. To the extent that service hours are not imposed, confinement should be used to maintain a commensurate level of sanction.

D. Manifest Injustice

1. The judge may impose a juvenile case disposition that is either above or below the standard sentencing range when a standard sentence range would effect a manifest injustice. A Deputy Prosecutor making a recommendation either for or against a manifest injustice disposition shall first obtain approval from the lead juvenile deputy.
2. The Deputy Prosecutor may recommend a manifest injustice exception when imposition of the standard range would impose a clear danger to society because:
 - a. The standard range is artificially low in that the offender's criminal history does not accurately reflect the true prior involvement of the offender with the court; or
 - b. The crime was committed in a particularly aggressive, dangerous, heinous or depraved manner suggesting that the standard punishment would depreciate the seriousness of the crime and pose a threat to community safety; or
 - c. The crime is part of a series of serious crimes but the offender does not have a significant history and thus there is a negligible increase factor; or
 - d. The crime adjudicated does not accurately reflect the conduct of the offender (such as when a witness was unavailable for fact-finding resulting in conviction for a lesser included offense that does not adequately reflect the gravamen of the offense); or
 - e. The offender has a physical or psychological condition, the offense was attributable to the condition, the condition is amenable to treatment, a treatment program for the condition is available, and the treatment program proposed meets the goal of rehabilitation.

3. The Deputy Prosecutor may recommend a manifest injustice exception when imposition of the standard range would impose an excessive penalty on the offender because:
 - a. The offender provided information or testimony that reasonably will lead to conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest; or
 - b. the offender acted under strong and immediate provocation from the victim; or
 - c. the offender was suffering from a mental or physical condition that significantly reduced his/her culpability for the crime, though failing to establishing a defense; or
 - d. The offender has a physical or psychological condition, the offense was attributable to the condition, the condition is amenable to treatment, a treatment program for the condition is available, and the treatment program proposed meets the goal of rehabilitation; or.
 - e. the offender's conduct neither caused nor threatened serious harm, and the offender did not contemplate that his/her conduct would cause or threaten serious harm.

4. Manifest Injustice Not Initiated by Prosecutor

The Deputy Prosecutor shall not concur with Probation in a recommendation of manifest injustice absent notice to the defense.

E. Deferred Dispositions

With a "deferred disposition," the juvenile is found guilty, but the court's sentence is deferred on certain conditions. The case can be dismissed later, if the offender satisfies court-ordered probationary requirements. When an offender is eligible for a "deferred disposition" under RCW 13.40.127, the Deputy Prosecutor usually will not oppose the imposition of a deferred disposition.

1. However, the Deputy Prosecutor normally will oppose the deferred IF:
 - a. The case involves the offender's use or possession of a firearm; or

- b. The case contains other aggravating factors which make it akin to a violent offense (such as serious injuries or serious threats to victims).
2. Occasionally, the Deputy Prosecutor will require that the defense pursue a deferred as part of the plea agreement (e.g. when an offender receives a reduction to a misdemeanor, but it's appropriate that the offender use, or "burn", the deferred.)
3. When the defense pursues a deferred, the Deputy Prosecutor will strongly encourage the respondent to enter a guilty plea, rather than a stipulation to the police reports.
4. When an offender violates a deferred disposition, the Deputy Prosecutor normally will support revocation of the deferred, except in the face of *de minimis* violations or ones which can be appropriately remedied without revoking the disposition.
5. The supervising probation officer is the person normally aware of violations, and normally responsible for filing motions to revoke deferred dispositions. However, when a respondent on a deferred disposition commits a new Snohomish County offense, the Deputy Prosecutor shall file the motion to revoke the deferred, usually at the same time as the new Information is filed. The two proceedings shall then "track" together in front of a Judge, rather than the Commissioner.

F. Restitution

When the police referral contains sufficient information to determine that there is a victim who has suffered easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for personal injury, and/or lost wages resulting from injury, and the damages amount to over \$50, the Deputy Prosecutor shall include restitution as part of the disposition recommendation. If the loss is under \$50, the Prosecutor's Office does not have sufficient resources to research, document and process these claims, although the victim may independently request the court to impose restitution as part of the disposition.

10.06 JUVENILE DRUG COURT

Eligibility for referral to Juvenile Drug Court shall be determined by the Juvenile Drug Court DPA, or the Lead Juvenile DPA. The Prosecutor's Office is the "gatekeeper." While willing to consult with other interested parties, the Deputy Prosecutor reserves the exclusive right to deny referral of any offender.

Generally, the Deputy Prosecutor will agree to refer property or drug offenses, upon the offender's request, when the offender needs and is amenable to drug/alcohol treatment (e.g. would be eligible for CDDA), but with these general exclusions:

- A. No cases involving firearms;
- B. No cases (or history) of violent offenses or sex offenses;
- C. No cases involving substantial drug dealing;
- D. No prior Drug Court cases; and
- E. No substantial threatening or dangerous anti-social behavior.
- F. Juveniles charged with Attempting to Elude are presumed ineligible for Juvenile Drug Court. Attempting to Elude cases that did not involve a prolonged chase and did not involve risk to the public may be considered for Juvenile Drug Court on a case by case basis.

Juvenile Drug Court candidates generally shall be between ages 14 and 17½.

Our largely "open door" policy is justified because of the demonstrated success of Juvenile Drug Court graduates. Drug Court has more rigorous requirements than a standard range disposition and probation, such that Drug Court participants experience more detention and other sanctions than if they had opted for a standard range disposition.

10.07 HOMICIDE

See Section 9.11(A) Homicide, and 10.04 Declines to Adult Court

10.08 ASSAULT

Filing

A. Evidentiary Sufficiency

See Section 9.11(B) Assault, and 10.04 Declines to Adult Court.

B. Interviews

Pre-charging, the Deputy Prosecutor shall try to interview felony assault victims, if significant factual issues appear to exist, or if the case appears particularly sensitive. If the case proceeds to trial, all assault victims shall be interviewed beforehand.

C. Assault in the Second Degree, RCW 9A.36.021

See Section 9.11(B)(2)(b)

Armed assaults which cause significant injury or are intended to cause significant injury should be charged as second degree assault.

An assault with a firearm should always be charged as Second Degree Assault, even if the gun is unloaded. State v. Curtis, 14 Wn. App. 735 (1976); State v. Thompson, 13 Wn. App. 1 (1975).

An assault with a knife should be charged as Second Degree Assault, if the circumstances indicate the offender caused significant injury or intended to inflict significant injury. On the other hand, a charge of Unlawful Display of a Weapon, RCW 9.41.270, generally is more appropriate for an offender who draws a knife and makes an oral threat, but does not advance and withdraws the knife.

Juveniles who use weapons such as sticks and stones may not fully appreciate the risk of harm. Absent evidence of significant injury or intent to inflict significant injury, second degree assault charges will not be filed when the weapon used was a stick or stone.

An assault with a B-B gun normally will be filed as Unlawful Display of a Weapon, RCW 9.41.270, unless the circumstances indicate the offender created risk of significant injury or intended to inflict significant injury.

D. Assault in the Third Degree, RCW 9A.36.031

See Section 9.11(B)(2)(c), although the procedural requirements in the second and third paragraphs of (c)(1) need not apply in juvenile cases.

E. Misdemeanor Assaultive Conduct

1. Assault in the Fourth Degree, RCW 9A.36.041

(a) Assault in the Fourth Degree shall be charged when the case presents evidence sufficient to establish:

(1) An offensive, nonconsensual intentional touching of the person or body of another;

(2) or other acts which meet the definitions drawn from the Washington Pattern Jury Instructions, WPIC 35.50.

(b) Cases presenting unlawful touchings which suggest sexual motivation should be filed with reference to the standards described under Sexual Assault.

2. Reckless Endangerment, RCW 9A.36.050

Reckless endangerment shall be charged when a person recklessly engages in conduct which creates a substantial risk of death or serious injury to another.

A substantial risk means a reasonable possibility of death or serious physical injury. Such potential harm, if realized, should require medical attention of more than a first aid nature.

3. Unlawful Display of a Weapon, RCW 9.41.270

Unlawful Display of a Weapon shall be charged when a person carries, exhibits, displays or draws any weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that manifests an intent to intimidate or that warrants alarm.

Displaying a weapon shall not be charged when the statutory defenses contained in RCW 9.41.270(3) are present.

4. Aiming or Discharging Firearms, RCW 9.41.230

Aiming or discharging firearms shall be charged when a person aims a firearm, whether loaded or not, at or towards a human being, or discharges or throws a deadly missile in a public place where a person might be endangered thereby, and the circumstances do not merit a felony charge of assault as described above.

5. Municipal Violation

County and city ordinances prescribe assaultive, threatening and weapons related offenses. The Juvenile Department of the Superior Court has jurisdiction over these offenses when they are committed by a juvenile. RCW 13.40.020(19). Where the identical acts could be charged under local or State law, the charge should be brought under State law. State v. Inglis, 32 Wn. App. 700 (1982).

6. Malicious Harassment, RCW 9A.36.080

Malicious harassment shall be charged if sufficient admissible evidence exists of intent to intimidate or harass someone because of the offender's perception of that person's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical or sensory handicap, and when the malicious actions of the accused caused physical injury to another person or caused physical damage to the property of another. In the situation where the accused, by words or conduct, only places another in reasonable fear of harm to person or property, malicious harassment shall only be charged after the filing deputy is satisfied that the limitations contained in RCW 9A.36.080(1) do not apply.

10.09 SEXUAL ASSAULTS

- A. See Standard 9.13.

Most of the standards applicable to adult sex offenders also pertain to juvenile offenders. The differences are noted below.

- B. Sentence Recommendation – Standard Range

A sentence within the standard range shall be recommended. Recommendations outside the standard range shall be made only pursuant to the exception policy. All exceptions shall be discussed with the victim before being recommended to the court.

- C. Special Sexual Offender Disposition Alternative (SSODA)

The SSODA is a treatment-oriented disposition. Confinement time is suspended on condition the offender successfully completes treatment.

1. Statutory Requirements, RCW 13.40.160

Under RCW 13.40.160(3), the following statutory requirements must be met before the defendant qualifies for the SSODA:

- a. The defendant's current crime(s) cannot be either Rape in the First Degree; or an attempt, solicitation, or conspiracy to commit Rape 1.
- b. The defendant does not have a criminal history of sex offenses.
- c. The court shall consider the victim's opinion, as well as expert reports on whether (1) the defendant and the community would benefit from the use of the special sexual offender alternative and (2) the defendant is amenable to treatment.

2. Sentence Recommendation for SSODA

The Deputy Prosecutor will recommend a SSODA only under the following circumstances:

- a. the current crime was not aggravated by use of a weapon or physical injury to the victim or sadistic behavior;

- b. A qualified expert has determined that the offender is amenable to treatment, and an acceptable treatment plan has been formulated;
- c. The offender does not have a history of escapes or failures to appear;
- d. The offender admits the offense and expresses his/her willingness to participate in the program;
- e. The defendant is not a poor risk for community supervision and outpatient treatment; and
- f. The deputy has consulted with the victim and/or victim's family regarding this option.

10.10 ROBBERY

See Section 9.11(D) Robbery and 10.04 Declines to Adult Court. Precharging, the Deputy Prosecutor shall try to interview robbery victims, if significant factual issues appear to exist, or if the case appears particularly sensitive. If the case proceeds to trial, all robbery victims shall be interviewed beforehand.

A taking of property from the person of another, when no force is used and no injury results, shall be charged as Theft in the First Degree. A taking of property from the person of another, when the victim struggles with the offender or when the offender uses force during the course of the robbery or in flight from the robbery, shall be charged as Robbery in the Second Degree.

10.11 BURGLARY

Filing

A. Charge Selection

Degree

1. Burglary in the First Degree, 9A.52.020

See Section 9.14(A)(2)(a). That section applies with the following modification:

Normally, when a juvenile steals a firearm or other deadly weapon in the burglary with no evidence of use or intent to use, the initial charge will be either Residential Burglary or Second Degree Burglary with an additional charge of Theft of Firearm, or the like.

Normally, it will be inappropriate to send to JRA a youngster with little or no history who simply takes a gun. However, when the juvenile has substantial history, had the principal objective of stealing guns, steals quite a few firearms, or other aggravating circumstances exist, then a First Degree Burglary charge should be filed right from the start. In all cases involving firearms, a “deferred disposition” will be opposed.

2. Residential Burglary and Burglary in the Second Degree. See Section 9.14(A)(2)(b)-(e); see also Section 10.01(F) regarding the handling of expedited crimes in Juvenile Court.

10.12 ARSON, RECKLESS BURNING AND MALICIOUS MISCHIEF

See Section 9.14(B) Arson and Malicious Mischief

Examples:

- A. Scott disrupts classes by setting a match to a trash can. No one is actually endangered, no damage is done as the fire is quickly extinguished, and the trash can was a limited and confined source of fuel. Charge: Reckless Burning in the Second Degree.
- B. Sara brings a “home-made” pipe bomb to school and uses it to blow up a locker while other kids are in the hallway. Charge: Arson in the First Degree (manifestly dangerous).

10.13 TRAFFIC STANDARDS

See Section 9.15 Felony Traffic Offenses

The filing deputy must take care in determining whether the juvenile court has exclusive jurisdiction in traffic cases. Juvenile Court has jurisdiction over traffic offenses committed by juveniles under 16 years of age. However, the appropriate District /Municipal Court has jurisdiction over non-felony traffic offenses committed by juveniles who are 16 and 17 years of age. For the purposes of this standard, age is the age at the time of legal proceedings.

Occasionally, a law enforcement officer will cite a juvenile (16-17) into District/Municipal Court for a traffic offense and also refer the juvenile to Juvenile Court for a non-traffic offense or a felony traffic offense arising from the same set of facts. These situations often pose res judicata or joinder (CrR 4.3) problems that are not worth litigating. When multiple offenses are committed, and one of the offenses is under the exclusive jurisdiction of Juvenile Court, an evaluation must be made to determine if that offense is the most serious of those committed. When possible, cases should be joined at the court that has jurisdiction over the most serious offense.

Example: Johnny is 17 years old. He and his friends get drunk. Johnny's license is suspended, but he decides to drive anyway, with his friends and beer in the car. A uniformed officer sees Johnny weaving down the road at a high rate of speed. The officer pursues, with emergency lights flashing. Johnny, seeing the officer, accelerates to 80 mph, running two red lights and almost hitting a parked car. Upon apprehension, the officer notes that Johnny is "wasted." The officer cites Johnny for DUI and DWLS into Municipal Court. He also charges Johnny with Attempting to Elude and MIP into Juvenile Court. The best result in such a situation would be to have the Municipal Court dismiss the charges filed there so that the DUI and DWLS charges can be consolidated with the other charges in Juvenile Court, which includes the Class C Felony of Attempting to Elude.

10.14 THEFT AND RELATED OFFENSES

See Section 9.14(C) Theft and Fraud Related Crimes

10.15 ESCAPE STANDARDS

See Section 9.14(D) Escape

An individual who fails to return from a pass, leave, furlough or to a group home shall not be charged, if the person voluntarily returns to the facility within 24 hours of the time due. When appropriate, a violation of community supervision may be filed instead.

10.16 CONTROLLED SUBSTANCES

See Section 9.16 Drug Crimes

A. Felony drug crimes

While adult offenders often are offered a misdemeanor plea in lieu of a felony conviction for possessing personal use amounts of controlled substances, juvenile offenders typically are prosecuted for the felony drug crime. This is because there are more rehabilitative resources available through the juvenile system, and because of the utility of strong, early intervention for juvenile offenders.

B. Misdemeanor Possession of Marijuana

In Snohomish County, when a law enforcement agency refers a juvenile for a misdemeanor Possession of Marijuana, the referral first is screened for participation in the Juvenile Court Diversion Program by the court's probation department. Only if the offender is deemed ineligible for Diversion, opts out, or is rejected from the program, is the case referred to the prosecutor's office. While the cost of prosecuting these minor crimes greatly increased once the legislature defined marijuana in a way that requires quantitative analysis, the health risks to juveniles who use marijuana warrants pursuing these misdemeanor crimes. If the referral is for possession of less than 1 gram, the prosecutor's office will decline to file a charge, due to an insufficient amount to conduct the requisite quantitative analysis. If the referral is for possession of 1 or more grams of marijuana, and the case otherwise has sufficient evidence to charge, we will send the referring law enforcement agency a request to obtain crime laboratory analysis of the substance to show that the substance has a THC concentration greater than 0.3 percent on a dry weight basis. Upon receipt of the crime lab report confirming that the substance meets this statutory definition of marijuana, we will charge the case. We obtain the lab report before charging, because the court scheduling of juvenile cases

allows little time between trial confirmation and trial to obtain a lab test. If the juvenile offender has been held in custody on probable cause, on a case by case basis, we will consider making an exception and charging the case without the lab test, and requesting the crime lab to quickly complete the substance analysis.

10.17 ALCOHOL OFFENSES

Minor in Possession or Consumption (MIP), or Minor Exhibiting the Effects of Consuming Liquor (MIC) shall be charged when legally sufficient evidence exists that the respondent is under the age of eighteen and had in his/her possession or consumed an alcohol beverage. See State v. Hornaday, 105 Wn.2d 120 (1986).

A. Possession

A charge based on constructive possession shall be filed if the case provides sufficient admissible evidence to find that the respondent had dominion and control over the premises where the substance was located.

A lone driver of a vehicle will be deemed to have dominion and control over a substance found in the vehicle. Passengers usually will not be charged unless they are in such proximity to the substance to establish dominion and control.

B. Consumption

Charges based on consumption alone will be filed if there is sufficient admissible evidence which establishes that the juvenile had consumed alcohol. The smell of alcohol on a juvenile's breath, admissions by the offender, a breathalyzer reading, or any evidence of inebriated conduct may be considered in making the determination to file a consumption charge. There need not be any evidence as to the actual act of consuming the alcohol if any of the above factors are present. But see State v. Hornaday, supra.

C. Exceptions: When Minors May Possess or Consume Alcohol, RCW 6.44.270.

Charges based on possession or consumption of alcohol shall not be filed where the alcohol was supplied by a parent or guardian, or administered for medicinal purpose by his/her physician or dentist, or when used in connection with bona fide religious services. As knowledge or evidence of the existence of any of these exceptions is peculiarly within the respondent's possession, these exceptions should be viewed as

affirmative defenses on which the respondent has the burden of production as well as the burden of proof by a preponderance of the evidence.

In situations where the respondent alleges parental permission, the alcohol must have been consumed under the direct supervision of the parent or guardian before any weight will be given this affirmative defense.

Also, to prove the MIC charge, the offender must be in a public place.

10.18 KIDNAPPING STANDARDS

See 9.11(C) Kidnapping

10.19 CONSIDERATIONS REGARDING DETENTION AND RELEASE

Consistent with RCW 13.40.040(2)(a)(i)-(v), typical considerations regarding detention and release concern whether:

- A. The juvenile will likely fail to appear for further proceedings.
- B. Detention is required to protect the juvenile from himself/herself.
- C. The juvenile is a threat to community safety.
- D. The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice.
- E. The juvenile has committed a crime while another case against him/her was pending.

The Court possesses greater power to detain juveniles than adults. For example, bail is usually required to be posted as “cash only”, and frequently, to be “posted by a parent only”.

10.20 PLEA NEGOTIATIONS AND DISPOSITIONS

Ordinarily, a juvenile respondent is expected to plead guilty as originally charged. Due to the high volume of cases and fact findings in juvenile court, it is recognized that some leeway in negotiations is necessary. The following guidelines for negotiation should be followed by Juvenile Court DPAs:

- A. No felony cases will be reduced for any reason without prior approval from the Lead Juvenile DPA.

- B. Misdemeanors and gross misdemeanors may be negotiated without the supervising DPA's approval, provided that the reduction or dismissal is one which can reasonably be justified.
- C. Care should be taken in all cases in which a reduction or dismissal occurs in exchange for a plea to another case that the victim of the reduced or dismissed case receives restitution to the extent that he/she would have received had the case been prosecuted as originally charged.
- D. In all violent felony or sex cases, the DPA assigned to the case should consult with the victim prior to reducing or dismissing the case and address any questions or concerns of the victim, to the extent that it is possible.
- E. The DPA should often consult with the respondent's probation officer and the investigating officer, where possible, prior to reducing or dismissing a felony.
- F. Unlike adult court, the juvenile probation officers determine criminal history, score and make recommendations to the court for disposition. In most cases, the Deputy Prosecutor will support the recommendation made by the probation officer for a disposition. When the DPA substantively disagrees with the probation officer's recommendation, the DPA must be certain that his/her recommendation has been communicated to the respondent prior to entry of the plea. This recommendation must also be reflected in the plea paperwork.
- G. When an offender has multiple cases pending resolution, and the plea negotiation involves an agreement not to charge a provable felony case, the DPA should attempt whenever possible to consult with the victim and the referring law enforcement agency, as well as obtain supervisor approval, prior to entering into the agreement.
- H. Plea offers should note the additional charges that will be added for trial.

APPENDICES

- A. ADULT FELONY SENTENCING GRID
- B. ADULT FELONY DRUG SENTENCING GRID
- C. JUVENILE OFFENDER SENTENCING STANDARDS
- D. DUI SENTENCING GRID
- E. COMMUNITY CUSTODY GRID
- F. SPECIAL RESPONSIBILITIES OF A PROSECUTOR, RPC 3.8

APPENDIX A **ADULT FELONY SENTENCING GRID**

RCW 9.94A.510

Sentencing grid for crimes committed after July 24, 1999

SERIOUSNESS
LEVEL

OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
XVI Life Sentence without Parole/Death Penalty										
XV	23y4 m	24y4 m	25y4 m	26y4m	27y4m	28y4 m	30y4 m	32y10m	36y	40y
	240- 320	250- 333	261- 347	271- 361	281- 374	291- 388	312- 416	338- 450	370- 493	411- 548
XIV	14y4 m	15y4 m	16y2 m	17y	17y11m	18y9 m	20y5 m	22y2m	25y7m	29y
	123- 220	134- 234	144- 244	154- 254	165- 265	175- 275	195- 295	216- 316	257- 357	298- 397
XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123- 164	134- 178	144- 192	154- 205	165- 219	175- 233	195- 260	216- 288	257- 342	298- 397
XII	9y	9y11 m	10y9 m	11y8m	12y6m	13y5 m	15y9 m	17y3m	20y3m	23y3m
	93- 123	102- 136	111- 147	120- 160	129- 171	138- 184	162- 216	178- 236	209- 277	240- 318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7 m	14y2 m	15y5m	17y11m	20y5m
	78- 102	86- 114	95- 125	102- 136	111- 147	120- 158	146- 194	159- 211	185- 245	210- 280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51- 68	57- 75	62- 82	67- 89	72- 96	77- 102	98- 130	108- 144	129- 171	149- 198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31- 41	36- 48	41- 54	46- 61	51- 68	57- 75	77- 102	87- 116	108- 144	129- 171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21- 27	26- 34	31- 41	36- 48	41- 54	46- 61	67- 89	77- 102	87- 116	108- 144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15- 15	21- 21	26- 26	31- 31	36- 36	41- 41	57- 57	67- 67	77- 77	87- 87

	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12+ equals one year and one day.

[2002 c 290 § 10. Prior: 2000 c 132 § 2; 2000 c 28 § 11; prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2. Formerly RCW [9.94A.310](#).]

APPENDIX B ADULT FELONY DRUG SENTENCING GRID

RCW 9.94A.517

Drug offense sentencing grid, effective until July 1, 2018.

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9 or more
III	51 to 68 months	68+ to 100 months	100+ to 120 months
II	12+ to 20 months	20+ to 60 months	60+ to 120 months
I	0 to 6 months	6+ to 12 months	12+ to 24 months

References to months represent the standard sentence ranges. 12+equals one year and one day.

The court may utilize any other sanctions or alternatives as authorized by law, including but not limited to the special drug offender sentencing alternative under RCW [9.94A.660](#) or drug court under RCW [2.28.170](#).

[2013 2nd sp.s. c 14 § 1; 2002 c 290 § 8.]

APPENDIX C JUVENILE OFFENDER SENTENCING STANDARDS

RCW 13.40.0357

Juvenile offender sentencing standards, effective January 1, 2014

DESCRIPTION AND OFFENSE CATEGORY

		JUVENILE DISPOSITION
JUVENILE DISPOSITION	DESCRIPTION (RCW CATEGORY CITATION)	CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
.....		

Arson and Malicious Mischief

A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+

Assault and Other Crimes Involving Physical Harm

A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+

Burglary and Trespass

B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Mineral Trespass (78.44.330)	C
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E

Drugs

E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030 (2)(a))	D+
E	Possession of Legend Drug (69.41.030 (2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401 (2)(a) or (b))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401 (2)(c))	C
E	Possession of Marihuana <40 grams (69.50.4014)	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011 (2) (a) or (b))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances	C

	(69.50.4011 (2) (c), (d), or (e))	
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C
Firearms and Weapons		
B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
C	Possession of Firearms by Minor (<18) (9.41.040 (2)(a)(iii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
Homicide		
A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+
B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
Kidnapping		
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
Obstructing Governmental Operation		
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D
E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
Public Disturbance		

C+	Criminal Mischief with Weapon (9A.84.010(2)(b))	D+
D+	Criminal Mischief Without Weapon (9A.84.010(2)(a))	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
Sex Crimes		
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B+	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	Indecent Exposure (Victim <14) (9A.88.010)	E
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
A-	Child Molestation 1 (9A.44.083)	B+
B	Child Molestation 2 (9A.44.086)	C+
C	Failure to Register as a Sex Offender (9A.44.132)	D
Theft, Robbery, Extortion, and Forgery		
B	Theft 1 (9A.56.030)	C
C	Theft 2 (9A.56.040)	D
D	Theft 3 (9A.56.050)	E
B	Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2))	D
D	Identity Theft 2 (9.35.020(3))	E
D	Improperly Obtaining Financial	E

	Information (9.35.010)	
B	Possession of a Stolen Vehicle (9A.56.068)	C
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
B	Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
C	Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
B	Theft of a Motor Vehicle (9A.56.065)	C
	Motor Vehicle Related Crimes	
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020 (4)(a))	C+
C	Hit and Run - Injury (46.52.020 (4)(b))	D
D	Hit and Run-Attended (46.52.020 (5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
B+	Felony Driving While Under the Influence (46.61.502 (6))	B
B+	Felony Physical Control of a Vehicle While Under the Influence (46.61.504 (6))	B
	Other	
B	Animal Cruelty 1 (16.52.205)	C
B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone	E

	Calls (9.61.230)	
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW [13.40.167](#).

OPTION A

JUVENILE OFFENDER SENTENCING GRID

STANDARD RANGE						
	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
		Except 30-40 weeks for 15 to 17 year olds				
CURRENT	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
OFFENSE	B	LS	LS	15-36 weeks	15-36 weeks	52-65 weeks
CATEGORY	C+	LS	LS	LS	15-36 weeks	15-36 weeks
	C	LS	LS	LS	LS	15-36 weeks
	D+	LS	LS	LS	LS	LS
	D	LS	LS	LS	LS	LS
	E	LS	LS	LS	LS	LS
PRIOR ADJUDICATIONS		0	1	2	3	4 or more

NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW [13.40.020](#).

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW [13.40.180](#) applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

OPTION B

SUSPENDED DISPOSITION ALTERNATIVE

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW [13.40.200](#) or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A+ offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW [9A.32.060](#)); or

(iii) Assault in the second degree (RCW [9A.36.021](#)), extortion in the first degree

(RCW [9A.56.120](#)), kidnapping in the second degree (RCW [9A.40.030](#)), robbery in the second degree (RCW [9A.56.210](#)), residential burglary (RCW [9A.52.025](#)), burglary in the second degree (RCW [9A.52.030](#)), drive-by shooting (RCW [9A.36.045](#)), vehicular homicide (RCW [46.61.520](#)), hit and run death (RCW [46.52.020](#)(4)(a)), intimidating a witness (RCW [9A.72.110](#)), violation of the uniform controlled substances act (RCW [69.50.401](#) (2)(a) and (b)), or manslaughter 2 (RCW [9A.32.070](#)), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW [13.40.193](#); or

(d) Adjudicated of a sex offense as defined in RCW [9.94A.030](#).

OR

OPTION C

CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW [13.40.160](#)(4) and [13.40.165](#).

OR

OPTION D

MANIFEST INJUSTICE

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW [13.40.160](#)(2).

[2013 c 20 § 2; 2012 c 177 § 4. Prior: 2008 c 230 § 3; 2008 c 158 § 1; 2007 c 199 § 11; 2006 c 73 § 14; 2004 c 117 § 1; prior: 2003 c 378 § 2; 2003 c 335 § 6; 2003 c 53 § 97; prior: 2002 c 324 § 3; 2002 c 175 § 20; 2001 c 217 § 13; 2000 c 66 § 3; 1998 c 290 § 5; prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

APPENDIX D
DUI SENTENCING GRID

http://www.courts.wa.gov/newsinfo/content/duigrid/duiGrid_20130928.pdf

APPENDIX E COMMUNITY CUSTODY GRID

Community Custody for Felony and Misdemeanor Offenses in Superior Court

Felonies

I. Community custody is **mandatory** when:

A. Prison sentence

1. A sex offense for which an indeterminate sentence is imposed: for any period of time the defendant is released from total confinement before the expiration of the maximum sentence. RCW 9.94A.507(5).
DOC must supervise. RCW 9.94A.501(4)(a).
2. A sex offense for which a determinate sentence is imposed: for 3 years. RCW 9.94A.701(1)(a).
DOC must supervise. RCW 9.94A.501(4)(a).
3. A serious violent offense: for 3 years. RCW 9.94A.701(b).
DOC must supervise. RCW 9.94A.501(4)(a).
4. A violent offense that is not a serious violent offense: for 18 months. RCW 9.94A.701(2).
DOC will supervise only if offender is a dangerous mentally ill offender (RCW 72.09.370; 9.94A.501(4)(b)); or if the risk assessment classifies the offender at high risk to reoffend (RCW 9.94A.501(3)); or if the current offense is a DV felony offense when the conviction occurs on or after 8/2/11, and when DV has been pleaded and proven for the current conviction, and there is a prior conviction for a repetitive DV offense or a prior conviction on or after 8/2/11 for a DV felony offense in which DV was pleaded and proven (RCW 9.94A.501(4)(e)).
RCW 9.94A.501(5).
5. A crime against persons (Specifically, these crimes are murder, manslaughter, kidnapping, Assault 1, 2, and 3, assault of a child, rape, rape of a child, robbery, Arson 1, Burg 1, ID theft, extortion, indecent liberties, incest, vehicular homicide, vehicular assault, child molest, Promoting Prostitution 1, intimidating a juror, comm. w/ minor, intim a witness, intim a public servant, bomb threat (if against a person), unlawful imprisonment, promoting a suicide attempt, riot (if against a person), stalking, custodial assault, DV court order viol, counterfeiting (if a violation of RCW 9.16.035(4), felony DUI, felony Phys Control, felony viol of RCW 69.50 or 69.52 or an attempt, conspiracy or solicitation to commit such a crime, and felony FTR.):
for 1 year. RCW 9.94A.701(3)(a).
DOC will supervise only if offender is a dangerous mentally ill offender (RCW 72.09.370; 9.94A.501(4)(b)); or if the risk assessment classifies the offender at high risk to reoffend (RCW 9.94A.501(3)); or if the current offense is a DV felony offense when the conviction occurs on or after 8/2/11, and when DV has been pleaded and proven for the current conviction, and there is a prior conviction for a repetitive DV offense or a prior conviction on or after 8/2/11 for a DV felony offense in which DV was pleaded and proven (RCW 9.94A.501(4)(e)).

RCW 9.94A.501(5).

6. An offense involving the unlawful possession of a firearm under RCW 9.41.040, when the offender is a criminal street gang member or associate: for 1 year. RCW 9.94A.701(3)(b).

DOC will supervise only if offender is a dangerous mentally ill offender (RCW 72.09.370; 9.94A.501(4)(b), or if the risk assessment classifies the offender at high risk to reoffend (RCW 9.94A.501(3)).

RCW 9.94A.501(5).

7. A felony offense under RCW 69.50 or 69.52, committed on or after 7/1/2000: for 1 year. RCW 9.94A.701(3)(c).

DOC will supervise only if offender is a dangerous mentally ill offender (RCW 72.09.370; 9.94A.501(4)(b), or if the risk assessment classifies the offender at high risk to reoffend (RCW 9.94A.501(3)).

RCW 9.94A.501(5).

8. A felony FTR that is the offender's first felony FTR: for 1 year.

RCW 9.94A.701(3)(d).

DOC must supervise. RCW 9.94A.501(4)(d).

9. A felony sentenced under the **Prison-based Drug Offender Sentencing Alternative**: for a term equal to $\frac{1}{2}$ the midpoint of the standard sentence range. RCW 9.94A.701(4); 9.94A.662(1)(b).

DOC must supervise. RCW 9.94A.501(4)(f).

NB: If the standard range term of confinement combined with the term of community custody specified above were to exceed the statutory maximum for the crime, then the term of community custody shall be reduced so as to not exceed the statutory maximum. RCW 9.94A.701(9).

B. Residential Chemical Dependency Treatment-Based Alternative: for a term equal to $\frac{1}{2}$ the midpoint of the standard sentence range or 2 years, whichever is greater. RCW 9.94A.660.

DOC must supervise. RCW 9.94A.501(4)(f).

C. Special Sex Offender Sentencing Alternative: for a term equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater. RCW 9.94A.670(5)(b).

DOC must supervise. RCW 9.94A.501(4)(a).

D. Parenting Sentencing Alternative: for 12 months. RCW 9.94A.655.

DOC must supervise. RCW 9.94A.501(4)(f).

II. Community custody is **discretionary** when:

- A. First Time Offender Waiver:** for up to 6 months, unless treatment is ordered, in which case the term may include up to the period of treatment but shall not exceed 12 months. RCW 9.94A.650(3).
DOC must supervise. RCW 9.94A.501(4)(f).
- B. Jail sentence for a sex offense:** for up to 1 year. RCW 9.94A.702(1)(a).
DOC must supervise. RCW 9.94A.501(4)(a).
- C. Jail sentence for a violent offense; a crime against a person** (see list above); **a felony violation of RCW 9A.69.50 or 69.52 or an attempt, conspiracy, or solicitation to commit such a crime; or a felony FTR with no prior FTR:** for up to 1 year. RCW 9.94A.702(1)(b); 702(1)(c); 702(1)(d); 702(1)(e).
DOC will supervise only if offender is a dangerous mentally ill offender (RCW 72.09.370; 9.94A.501(4)(b)); or if the risk assessment classifies the offender at high risk to reoffend (RCW 9.94A.501(3)); or if the current offense is a DV felony offense when the conviction occurs on or after 8/2/11, and when DV has been pleaded and proven for the current conviction, and there is a prior conviction for a repetitive DV offense or a prior conviction on or after 8/2/11 for a DV felony offense in which DV was pleaded and proven (RCW 9.94A.501(4)(e)).
RCW 9.94A.501(5).

NB: Generally, we are not recommending community custody for drug offenses with jail sentences.

Misdemeanors and Gross Misdemeanors

I. Court's authority to suspend imposition of a sentence and to impose probation conditions.

The Superior Court may suspend the imposition of a sentence for the maximum term of the sentence or two years, whichever is longer. RCW 9.92.060(1); 9.95.210(1). Exception: In DUI sentences occurring on or after 8/1/12, the Superior Court may suspend all or part of the sentence for up to five years. RCW 9.95.210(1)(b).

To be considered when filing DUI charge: When a DUI is sentenced in District Court, the court must impose mandatory minimum jail confinement and must suspend the balance for five years. RCW 46.61.5055. Your filing decision should take into account the charging standard re a DUI that accompanies a felony charge, the preference of one prosecution, the length of sentence to be imposed on any felony charge, the need for supervision, and the inability to obtain supervision of mandatory conditions on a DUI in Superior Court.

To be considered when filing DV charge: Courts of limited jurisdiction may impose up to five years of probation on DV offenses. RCW 3.66.068; 3.50.330; 35.20.255.

II. Supervision of probation conditions by DOC

A. The court may order the defendant to report to DOC and follow DOC instructions for up to 12 months of the probationary period. RCW 9.95.210(4).

B. However, for most misdemeanor and gross misdemeanor convictions (including DUI), DOC will not supervise. RCW 9.94A.501(5); RCW 9.95.210(6).

C. DOC will supervise probation conditions for up to 12 months on these misdemeanor convictions only:

1. The conviction occurs **before 8/2/11**, and the current offense is **Fourth Degree Assault or Violation of DV Court Order, and** there is a prior conviction for at least one of the following: a violent offense; a sex offense; a crime against a person (see list above); Fourth Degree Assault; or Violation of a DV Court Order. (The statutory directive for this expires 8/1/2014.) RCW 9.94A.5011.

2. The conviction occurs **on or after 8/2/11**, and the current offense is a **repetitive DV offense, and** when the DV is pleaded and proven for both the current conviction and a prior conviction. RCW 9.94A.501(1)(b); RCW 9.94A.501(2).

3. Current offense is **Sexual Misconduct with a Minor 2, Custodial Sexual Misconduct 2, Communication with a Minor for Immoral Purposes, or Failure to Register.** RCW 9.94A.501(1)(a); RCW 9.94A.501(2)

Summary by Joan Cavagnaro 7/28/11, updated 7/20/12

APPENDIX F
SPECIAL RESPONSIBILITIES OF A PROSECUTOR, RPC 3.8

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the defense and to the tribunal all mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor believes:
 - (1) the information sought is not protected from disclosure by an applicable privilege;
 - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
 - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.
- (g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant is innocent of the offense of which the defendant was convicted the prosecutor shall:

- (1) promptly disclose that evidence to an appropriate court or authority, and
- (2) if the conviction was obtained in the prosecutor's jurisdiction,
 - (A) promptly disclose that evidence to the defendant unless a court authorizes delay, and
 - (B) make reasonable efforts to inquire into the matter, or make reasonable efforts to cause the appropriate law enforcement agency to undertake an investigation into the matter.

(h) [Reserved.]

(i) A prosecutor's independent judgment, made in good faith, that the evidence is not of such nature as to trigger the obligations of paragraph (g) of this Rule, though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Comment

[1] [Washington Revision.] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Competent representation of the government may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[7] [Washington revision.] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person is innocent of committing, paragraph (g) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to make reasonable efforts to inquire into the matter to determine whether the defendant is in fact innocent, or make reasonable efforts to cause the appropriate law enforcement agency to undertake an investigation into the matter.

[8] [Reserved.]

[9] [Reserved. Comment[9] to Model Rule 3.8 is codified, with minor revisions, as paragraph (i).]

[Amended effective September 1, 2006, December 13, 2011.]